

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.244 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in Review W.P.M.P.No.55945 of 2016 in W.P.No.30167 of 2016 dated 31.01.2017. The appellant herein is the petitioner in W.P.No.30167 of 2016 wherein a declaration was sought that the action of the respondents, in taking up Mission Bhagiratha works (Telangana Drinking Water Supply Project) in the mineral bearing land of Iron Ore in Survey Nos.26/E/2 and 26/EE2 of Boddugonda Village, Gudur, was arbitrary and irrational. A consequential direction was sought to the respondents to take up the said works in any other parcel of land, which does not contain mineral wealth of iron ore, and to direct respondents 1 to 3 to consider and grant mining lease for iron ore in favour of the appellant-writ petitioner.

In his order, in W.P.No.30167 of 2016 dated 21.09.2016, the Learned Single Judge recorded the submission of the learned Special Government Pleader, appearing on behalf of the respondents, that the area, in respect of which the appellant-writ petitioner was seeking mining lease for excavating of iron ore, was not being utilised for the said works. In view of this submission of the learned Special Government Pleader, the writ petition was disposed of directing the respondents to consider the appellant-writ petitioner's application, for grant of a mining lease for excavation of iron ore in the above land, in accordance with law without reference to the Mission Bhagiratha Works Project.

Thereafter, the respondents in the writ petition filed W.P.M.P.No.55945 of 2016 seeking review of the order passed in W.P.No.30167 of 2016 dated 21.09.2016. The review was sought on the ground that the area mentioned by the appellant-writ petitioner was a hillock, and fell within the area allotted for construction of the Mission Bhagiratha Project, particularly on GLBR which has to be constructed on top of the said hillock; and it is in the larger public interest to allow a portion of the land, of an extent of 1½ acre claimed by the appellant-writ petitioner for grant of a mining lease for excavating iron ore, for the said project in the larger public interest.

In the review petition, the respondents herein contended that an enquiry was conducted by the Revenue Divisional Officer, on the basis of the instructions received from the Collector, Mahabubabad District; this enquiry revealed that the lands claimed for the purpose of grant of mining lease by the appellant-writ petitioner would be a part of the Mission Bhagiratha Project; except the hillock in question which would facilitate construction of certain structures connected with the execution of the project, no alternative area was available; and, if mining lease was granted, it would endanger the structure to be taken up for the Mission Bhagiratha Project meant for 608 habitations of 9 Mandals, of which 3 Mandals were in Mahabubabad District and 6 Mandals were in Narsampet Constituency in Warangal Rural District.

The Learned Single Judge took note of the submission urged by the learned Additional Advocate General that, on the basis of incorrect instructions given to him, the representation was made by the Special Government Pleader at the time of rendering of decision in the writ petition; and it was a fit case to review the order passed in the writ petition. The Learned Single Judge also took note of the

submission of Sri Vedula Venkata Ramana, learned Senior Counsel, that no error apparent on the face of the record was pointed out justifying the review jurisdiction of this Court being invoked, and an affidavit should be directed to be filed by the review petitioners stating on what basis they had come to the conclusion that the instructions given earlier to the Special Government Pleader was incorrect.

The Learned Single Judge, thereafter, observed that the review petition was filed on the ground that the instructions given to the Special Government Pleader, at that point time, were not correct; there was a *bona fide* mistake on the part of the Special Government Pleader in relying on the said instructions; and an important project in public interest, like the Mission Bhagiratha works, would get stalled because a portion of the land, in respect of which the appellant-writ petitioner was claiming mining lease, could not be utilised for the said project. While holding that Order 47 Rule 1 C.P.C. may not apply *mutatis mutandis* to proceedings under Article 226 of the Constitution of India, the Learned Single Judge held that principles analogous to the parameters under Order 47 Rule 1 C.P.C. would apply; and as the plea taken by the review petitioners was discovery of material, which could not be placed at the time when the writ petition was disposed of, this Court was inclined to review its order.

The order passed earlier in W.P.No.30167 of 2016 dated 21.09.2016 was set aside and the writ petition was restored to file; both parties were directed to maintain *status quo* in all respects in respect of subject land; the respondents were directed to file their counter affidavit in the writ petition; and it was held that there would be no restriction on the respondents to carry out Mission Bhagiratha

Project works in the land other than the subject land. The Learned Single Judge granted liberty to both the parties to request the Court, having provision to hear writ petitions of this nature, for early disposal of the interlocutory application or the main writ petition, as the case may be.

Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that the order passed by the Learned Single Judge in the Writ Petition was a consent order; no review could have been sought of an order passed with the consent of the parties; even if there was an error in the submission of the learned Special Government Pleader, it was merely an error of fact and not of law; factual errors in an order do not constitute an error apparent; Order 47 Rule 1 C.P.C. permits review on discovery of new evidence which, after the exercise of due diligence, was not within his knowledge at the time when the order was passed; this part of the provision has no application; and the Learned Single Judge erred in reviewing the earlier order passed by him.

Ordinarily, when a writ petition comes up for admission, the matter is heard for admission and for grant of interlocutory relief. It is only after the respondents file their counter affidavit, is the writ petition heard and disposed of. In the present case the writ petition was disposed of, at the stage of admission, based on the submission of the Learned Special Government Pleader which, in turn, was based on the instructions received by him from the Tahsildar that the subject land was not required for the Mission Bhagiratha Project. It is in such circumstances that the Learned Single Judge disposed of the writ petition directing the respondents to consider the appellant-

writ petitioner's application for grant of mining lease, in accordance with law, without reference to the Mission Bhagiratha Project.

Thereafter, the affidavit of the Superintending Engineer (Telangana Drinking Water Supply Project) was filed, along with the application seeking review wherein it was stated that, on the instructions of the District Collector, the Revenue Divisional Officer had conducted an enquiry after the writ petition was disposed of; and it is then that it came to light that a part of the subject land was required for the Mission Bhagiratha Project, and the instructions issued earlier to the Special Government Pleader, which resulted in the writ petition being disposed of at the stage of admission, was factually incorrect.

While these matters, no doubt, came to light after the writ petition was disposed of, the submission of Sri Vedula Venkata Ramana, learned Senior Counsel, that this would not constitute discovery of new evidence which, after the exercise of due diligence, was not within the knowledge of the review petitioners or could not be produced by them at the time when the order was passed, cannot be said to be without merit. It must, however, be borne in mind that the power of review inheres in the High Court, as it is a Court of record under Article 215 of the Constitution of India, and its power to correct its orders is plenary, and is neither fettered nor circumscribed by the provisions of Order 47 CPC. (**M.M.Thomas v. State of Kerala**¹; **A.Srinath v. APSRTC**²).

While the writ petition was, no doubt, allowed, on the basis of the submission of the Learned Special Government Pleader, *albeit* on the erroneous instructions given by the Tahsildar, the Learned Single

¹ (2000) 1 SCC 666

² (1996) 2 ALT 893 (F.B)

Judge has subsequently, taking note of the larger public interest involved, restored the writ petition to file. In the facts and circumstances of the present case, we do not consider it necessary to microscopically examine whether the order under appeal falls within the strict parameters of Order 47 Rule 1 C.P.C, as the jurisdiction, which we exercise under Clause 15 of the Letters Patent, is limited to an examination as to whether the order under appeal suffers from a patent illegality, which would cause substantial injustice to the parties concerned. All that the Learned Single Judge has done is to restore the writ petition to file which would enable both the parties to put forth their submission on merits, and for an order to be passed afresh in accordance with law. The Learned Single Judge has also directed parties to maintain *status quo* for a period of two weeks, and has permitted the respondents to proceed with the Mission Bhagiratha Project only outside the subject lands. The appellant-writ petitioner cannot, therefore, be said to have suffered substantial injustice thereby.

While the learned Special Government Pleader would submit that the respondents have since filed their counter affidavit, Sri Vedula Venkataramana, learned Senior Counsel appearing for the appellant, would point out that, in view of the huge pendency of cases in the admission court, it is difficult for a request to be made for an out of turn hearing; and this Court may consider directing the Learned Single Judge to take up the writ petition for admission at the earliest.

It would not be appropriate for us to determine the board of the Learned Single Judge. Suffice it to observe that, if a request is made by the learned counsel for the appellant-writ petitioner for an out of turn hearing of the matter (either for grant of interlocutory relief or

for a final order to be passed), we have no reason to doubt that the Learned Single Judge would consider the request. As the two weeks period, stipulated by the Learned Single Judge, has already expired, and as execution of Mission Bhagiratha Project on the subject land, even without an adjudication of their claim on merits, would undoubtedly cause prejudice to the appellant-writ petitioner, we extend the order of *status quo* passed by the Learned Single Judge by a further period of three weeks from today.

The Writ Appeal stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

02nd March, 2017
JSU



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER**



Writ Appeal No.244 of 2017

Date: 02.03.2017

JSU

