

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT APPEAL NO.660 OF 2013

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, filed under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in WP.No.11878 of 2013 dated 18.04.2013.

The appellant herein is the petitioner in the Writ Petition wherein he sought a writ of Mandamus to declare the order passed by the District Collector dated 12.03.2013 as null and void. Before the learned Single Judge, the petitioner contended that the impugned order was passed against a dead person; and, therefore, it was a nullity.

In the order under appeal, the learned Single Judge noted that, after the death of the petitioner's father, he was put on notice and, in reply thereto, had informed the authority that an explanation had already been submitted to the earlier show cause notice. The learned Single Judge was satisfied that there was no violation of principles of natural justice in passing the impugned order. With regards to all other contentions, the learned Single Judge observed that, since there is a remedy of an appeal under Section 6-C of the Essential Commodities Act, 1955 ("the Act" for brevity), it was open to the appellant-writ petitioner to avail the said remedy.

Before us Ms. K.Hemalatha, learned counsel for the appellant-writ petitioner, would contend that the order passed

against a dead person is a nullity; the impugned order is without jurisdiction, as the control order itself has no application; and, therefore, the learned Single Judge had erred in relegating the appellant-petitioner to the remedy of appeal.

It is evident from the proceedings of the District Collector dated 12.03.2013 that the case was first posted for hearing on 10.12.2012, and adjourned to 19.01.2013; the respondent was called absent as he had died; a notice was issued for hearing on 16.02.2013, and his son was called present; his son stated that he had already filed an explanation; and, considering the explanation and having perused the record, the impugned order was passed. As a notice was issued to the petitioner herein to appear, and as he had informed the authority that an explanation had already been filed, the impugned order came to be passed. We are satisfied, therefore, that the impugned order does not suffer from violation of principles of natural justice. As a remedy of an appeal is provided under the Statute i.e., Section 6-C of the Act, the learned Single Judge exercised his discretion to relegate the petitioner to remedy of an appeal. All contentions, including on the question of limitation and lack of jurisdiction of the District Collector who passed the impugned order, can be raised in an appeal under Section 6-C of the Act. Suffice it to make it clear that on the appellant availing the remedy of an appeal under Section 6-C of the Act, the said appeal will be considered on its own merits, without being influenced either by the observations in the order under appeal or in the order now passed by us.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

19th June 2017
RRB

