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

WRIT APPEAL No. 880 OF 2016

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

Heard the learned Advocate General for the State of Telangana appearing on behalf of the appellants and Sri A. Sudhershan Reddy, learned Senior Counsel appearing on behalf of the respondent – writ petitioner. This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WPMP.No.30760 of 2016 in W.P.No.24922 of 2016 dated 12.08.2016, whereby respondent Nos.3 and 4 (appellants herein) were directed to make payment of the arrears of vacant land tax to the respondent-writ petitioner pending disposal of the writ petition.

While taking note of the submission urged on behalf of the learned Senior Counsel appearing on behalf of the writ petitioner, the learned Single Judge faulted the State of Telangana in issuing G.O.Rt.No.41 dated 19.07.2014 permitting the funds of the Agricultural Market Committee (for short, 'AMC'), Bhainsa to be lent as a loan for executing certain construction works in the Agricultural Market Committee, Siddipet. The learned Single Judge was of the view that diversion of funds from AMC-Bhainsa to AMC-Siddipet, without first discharging the statutory liability of the AMC, Bhainsa to the Bhainsa Municipality, was illegal.

Learned Advocate General, for the State of Telangana, would submit that the tax arrears, allegedly due, are for the period prior to 1995 which expired more than 21 years ago; both Bhainsa Municipality and the AMC-Bhainsa are bodies corporate created under the Telangana Municipalities Act and the Telangana Agricultural Market Committees Act; they are liable to sue and to be sued in their own name; the AMC is not the respondent in the writ petition, and the relief sought for therein is against its Secretary and Chairman; the relief granted by the learned Single Judge amounts to allowing the writ petition at the stage of admission without giving the appellants herein an opportunity of being heard; and as the respondent-writ petitioner has the remedy of recovering the dues either under the Municipalities Act or the Revenue Recovery Act, they should have been relegated to take recourse to such remedies, instead of permitting them to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Learned Advocate General wound rely on **C.A. Abraham v. Income Tax Officer, Kottayam**[1] in this regard.

On the other hand, Sri A. Sudershan Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would submit that the tax arrears, which relate to the period prior to 1995, could not be recovered by the Bhainsa Municipality as the AMC, Bhainsa had filed a writ petition in the year 1998 itself, and had obtained an interim order on condition that they pay 50% of the tax arrears, thereby preventing the Bhainsa Municipality from recovering the balance arrears of tax; the AMC, Bhainsa paid the 50%, and the remaining 50% has not yet been paid; the writ petition filed by AMC, Bhainsa was dismissed for non-prosecution in the year 2004 itself; their application for restoration was ordered and the writ petition was restored; the said writ petition was again dismissed for non-prosecution in the year 2013, and has not been restored to file till date; the Government of Telangana has itself directed Bhainsa Municipality, by proceedings dated 21.03.2016, to forthwith collect vacant land tax arrears of Rs.3,68,67,127/- from AMC, Bhainsa without any further delay; at the same time, the State Government had also permitted AMC, Bhainsa to lend money to AMC, Siddipet in terms of G.O.Rt.No.41 dated 19.07.2014; and if the appellants are

[1] AIR 1961 SC 609

permitted to transfer money, on loan to Siddipet AMC, without first repaying their statutory dues to Bhainsa Municipality, there would be no money available with AMC, Bhainsa later for the respondent-writ petitioner to recover the said amount in accordance with law.

We find considerable force in the submission of the learned Advocate General that the interim order, passed by the learned Single Judge, has the effect of allowing the writ petition itself at the stage of admission. Such an order should, ordinarily, have been passed after affording the appellants herein (respondents in the writ petition) an opportunity of filing their counter affidavit. All the other contentions urged before us by the learned Advocate General can as well be urged before the learned Single Judge after a counter affidavit is filed in the writ petition by the appellants herein. We cannot, at the same time, ignore the submission of Sri A.Sudershan Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, that if AMC, Bhainsa is permitted to lend a sum in excess of Rs.8 crores to AMC, Siddipet, the respondents would not be able to recover their dues, and would suffer irreparable injury even in case the writ petition is allowed later.

In such circumstances, we consider it appropriate to set aside the order under appeal and restore WPMP.No.30760 of 2016 to file. The appellants herein shall retain with them a sum of at least Rs.4 crores, and not lend it to AMC, Siddipet for a period of six weeks from today.

Learned Advocate General appearing for the State of Telangana submits that the appellants herein (respondents in the writ petition) would file their counter affidavit in the writ petition within three weeks from today. It is open to the respondent-writ petitioner, any time after three weeks, to request the learned Single Judge to take up WPMP.No.30760 of 2016 for grant of interim relief.

The writ appeal is disposed of accordingly.

Miscellaneous petitions, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 30.01.2017
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