

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1185 of 2017 & Writ Petition No.17072 of 2017

COMMON 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 WVMP.No.2413 of 2017 in W.P.No.17072 of 2017 dated 03.07.2017. The respondents in the writ appeal filed W.P.No.17072 of 2017 seeking a mandamus to declare the action of the Tahsildar, Jaggaiahpetta, in initiating proceeding under the A.P.Land Encroachment Act, 1905 (for short "the Act") by issuing the impugned notice in RCA.No.322 of 2008 dated 06.05.2017 to evict the 1st petitioner therein from the subject land in Survey Nos.342/3 and 344 of Jaggaiahpetta Village and Mandal, Krishna District, as illegal and arbitrary. A consequential direction was sought to respondents 2 to 4 therein to act in accordance with law.

Status quo with regards possession was directed to be maintained by way of the interim order dated 18.05.2017. On a petition being filed by the appellants (respondents in the writ petition) seeking vacation of the interim order, the Learned Single Judge noted, in the order under appeal, that the respondent-writ petitioners had filed W.P.No.20659 of 2017 challenging the communication of the District Collector in seeking resumption of an extent of Ac.1.48 cents (Ac.1.30 cents in R.S.No.342/3 and Ac.0.18 cents in R.S.No.344); the question of treating the respondent-writ petitioners as encroachers would arise only on the outcome of W.P.No.20659 of 2017; and, since possession of the respondent-writ petitioners was admitted right from 1981-82,

initiation of land encroachment proceedings, when the main issue was pending in W.P.No.20659 of 2017, had resulted in a contradictory situation. The Learned Single Judge, called for the records and, after perusing the same, opined that the matter required examination and, consequently, the interim order be made absolute.

The proceedings, impugned in the writ petition, is the notice issued by the Tahsildar, Jaggaiahpetta on 06.05.2017 under Section 7 of the Act. Section 7 relates to prior notice to the person in occupation and, thereunder, before initiating proceedings under Sections 5 or 6, the Collector or the Tahsildar or the Deputy Tahsildar, as the case may be, shall cause to be served on the person, reported to be in unauthorised occupation of the land being the property of the government, a notice specifying the land so occupied, and calling on him to show cause before a certain date as to why he should not be proceeded against under Section 5 or 6 of the Act. Section 7 of the Act also stipulates that the notice should be served in the manner prescribed under Section 25 of the A.P. Revenue Recovery Act, 1984 (Act II of 1864) or in such other manner as the State Government by rules or order under Section 8 may direct.

The notice under Section 7 of the Act merely calls upon the persons, allegedly in unauthorised occupation of Government land, to show cause why they should not be proceeded against under Sections 5 or 6 of the Act. Section 5 of the Act prescribes the penalty on the person in unauthorised occupation and Section 6 relates to the liability of persons, who unauthorisedly occupy land, to summary eviction, forfeiture of crops etc. Under sub-section (1)

of Section 6 any person, unauthorisedly occupying any land for which he is liable to pay assessment under Section 3, may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar besides forfeiture. Section 6(2) prescribes the mode of eviction and, thereunder, an eviction under Section 6 shall be made by serving a notice in the manner provided in Section 7 on the person reported to be in occupation or his agent, requiring him, within such time as the Collector, Tahsildar or Deputy Tahsildar may deem it reasonable after receipt of the said notice, to vacate the land; and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same.

Consequent upon a notice being issued under Section 7 of the Act, the person, allegedly in unauthorised occupation of the Government land, is called upon to show cause why action should not be taken against him under Section 6 of the Act. If such a person is able to satisfactorily show cause, then no further action need be taken. If, on the other hand, the cause shown by the person, to whom a notice is issued under Section 7, is not found satisfactory, the Tahsildar can then, under Section 6(2) of the Act, give a notice to him to vacate the land within a reasonable time; and it is only if the person in unauthorised occupation fails to do so, would the Tahsildar then be required to initiate further steps to have him removed from the subject land in his unauthorised occupation.

The fact that the subject land is Government land is not in dispute. It is also not in dispute that the respondent-writ petitioners' occupation of these Government lands is not pursuant to any permission accorded to them by the Government. The

respondent-writ petitioners' case, in short, is that around Acs.17.00 of land owned by them falls on either side of the Government land of an extent of Ac.1.52 cents; and, unless this land is alienated in their favour, they would be deprived of access to their agricultural land, more so as, on all the other three sides, residential buildings have been constructed; and the only mode of entry to and exit from their agricultural lands is through this Government land of an extent of Ac.1.52 cents.

An enquiry appears to have been caused by the District Collector who was satisfied that it would suffice if an extent of Ac.0.04 cents of land is alienated to the respondent-writ petitioners for their exit from and entry into their agricultural lands; and the remaining extent of Ac.1.48 cents of Government land should be resumed. The order of the District Collector, directing resumption of an extent of Ac.1.48 cents of Government land, is the subject matter of challenge in W.P.No.20659 of 2017 which is pending on the file of this Court.

Learned Advocate General for the State of Andhra Pradesh, appearing on behalf of the appellants (respondents in the writ petition), would submit that, since the proceedings under challenge is a mere show cause notice, this Court ought to have relegated the respondent-writ petitioners to the remedy of filing a reply to the show cause notice; this Court, in judicial review proceedings under Article 226 of the Constitution of India, would ordinarily not entertain a writ petition against a mere notice to show cause, unless the said notice is contended to suffer from inherent lack of jurisdiction; it is not even the respondent-writ petitioners' case that the Tahsildar, who issued the notice under

Section 7 of the Act, lacked jurisdiction to do so; the respondent-writ petitioners should therefore have been relegated to the remedy of filing a reply to the show cause notice; and this Court should not have interdicted the proceedings, initiated against the respondent-writ petitioners, for their eviction from the Government land.

On the other hand Sri Vedula Srinivas, learned counsel for the respondent-writ petitioners, would submit that an appeal, under Clause 15 of the Letters Patent, is not maintainable as the order of *status quo* is a routine order passed by the Learned Single Judge during the pendency of the writ petition; no prejudice can be said to have been caused to the appellants as a result of such an order; the respondent-writ petitioners have been requesting the Government to alienate the entire extent of Ac.1.52 cents in their favour, at the then prevailing market rates; the correspondence shows that the Government was negotiating with them on the market price at which the subject lands should be alienated in their favour; and it is only because of the interference by an MLA of the ruling party that action is now sought to be initiated against the respondent-writ petitioners under the Act, since the 2nd respondent herein was earlier a Member of the ruling party before the 2014 assembly elections. Learned counsel would rely on **Midnapore Peoples' Co-op. Bank Ltd. Vs. Chunilal Nanda**¹ in support of his submission that the order passed by the Learned Single Judge, in the petition seeking vacation of the interim order, is not a judgment under Clause 15 of the Letters Patent and, therefore, an appeal would not lie against such an order. Learned

¹ (2006) 5 SCC 399

counsel would submit that, in any event, the Learned Single Judge has listed the writ petition for final hearing after Dasara Vacation, and no prejudice would be caused to the appellants as the matter is likely to be finally heard shortly.

On the question of maintainability of an appeal, under Clause 15 of the Letters Patent, it is relevant to note that, in **Bharat Cooking Coal Limited v. Dev PL(JV), Dhanbad**², the challenge before the Division Bench of the Jharkhand High Court was to an interim order passed by the Learned Single Judge granting status quo. On an objection being raised to the maintainability of the appeal, the Division Bench of the Jharkhand High Court, relying on the judgment of the Supreme Court in **Midnapore Peoples Co-op. Bank Limited v. Chunilal Nanda**³, held that it is only against routine orders or orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties, that a Letters Patent Appeal is not maintainable; and the interlocutory order under appeal, which caused gross injustice to a party, which deprived him of a valuable right, should be treated as a judgment within the meaning of the Letters Patent.

In **Union of India v. Government of Tamilnadu**⁴, the question which arose for consideration before the Division bench of the Madras High Court was whether an appeal, under Clause 15 of the Letters Patent, would lie against an interim order of injunction passed by the learned Single Judge. Relying on the judgment of

² 2014 Indlaw JHKD 294

³ (2006) 5 SCC 399

⁴ 2013 Indlaw MAD 832

the Supreme Court in **Shah Babulal Khimji v. Jayaben D.Kania**⁵,

the Division bench of Madras High Court observed:

“.....In reply, the learned Advocate General submitted that the policy decision taken by the Central Government can be challenged if it is in violation of the provisions of the Constitution, statutory enactment and against public interest or does not subserve the public interest. He further submitted that under the dual pricing policy, there is no restriction imposed on any of the bulk consumers to get high speed diesel from the retail outlets operated by the petro dealers, and the effect of the impugned order passed by the learned single Judge is only to provide a single place for the supply of high speed diesel required for operating the buses. According to the learned Advocate General, if the impugned order had not been passed, the buses of the State Transport Undertakings would have to go to the retail outlets for getting their tanks filled up, for which the State would have paid only concessional rate payable to high speed diesel, as there is no such prohibition in the policy. Thus, neither the Union of India nor the oil marketing companies are suffering any losses on account of the interim injunction granted by the learned single Judge. **He further submitted that the interim injunction was granted only till 12th April, 2013, and before the learned single Judge, learned standing counsel appearing for the Union of India did not raise any such plea, as has been raised in the present appeal. It is always open to the Union of India to move an application for vacating the exparte order of interim injunction passed by the learned single Judge, and all the pleas raised herein by the appellant shall be considered by the learned single Judge at the time of passing final orders on the application filed for grant of interim relief or finally deciding the main writ petition.** He further submitted that it is the usual practice of this Court not to assign any reasons while granting interim relief by passing an order of interim injunction at the initial stage, which practice has been followed by the learned single Judge in this case also. According to him, after exchange of affidavits, this Court considers all the pleas raised by the respective parties while passing order on the miscellaneous application, and therefore, the impugned order passed by the learned single Judge does not call for any interference.

Mr.M.Ravindran, learned senior counsel appearing for the Oil Marketing Companies, submitted that the learned single Judge ought not to have granted an order of temporary injunction where a policy decision is under challenge. The effect of grant of temporary injunction has a cascading effect and the oil marketing companies are put to loss of approximately Rs.424 crores daily, as other bulk consumers have also approached the other High Courts for grant of interim injunction. He has relied upon a decision of the Hon’ble Supreme Court in Bhavesh D.Parish vs. Union of India reported in 2000 (5) SCC 471.

In the present case, the interim order passed by the learned single Judge, though does not finally decide a issue, but materially and directly affects the appellant, as the Oil Marketing Companies, which supply diesel to the first respondent herein, would be required to supply diesel at the rate at which they are supplying to the retail consumers thereby causing daily loss to the Oil Marketing Companies running into several crores of rupees, and thus burdening the appellant in grant of subsidy. The view, which we are taking, is in lines with the principles laid down by the Hon’ble

⁵ AIR 1981 SC 1786

Supreme Court in Shah Babulal Khimji vs. Jayaben D.Kania and another (supra) (which has been followed by the Hon'ble Supreme Court in the case of Midnapore Peoples' Coop. Bank Ltd., (supra), wherein the Hon'ble Supreme Court, while considering the scope of Clause 15 of the Letters Patent had held that every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments, which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

Thus, the appeal preferred under Clause 15 of the Letters Patent by the appellant is maintainable....." (emphasis supplied)

The law laid down in the aforesaid judgments, of the Jharkhand and Madras High Courts, is that, even where the interim order passed by the learned Single Judge does not finally decide an issue, but materially and directly affects the appellant, it can be regarded as a judgment under Clause 15 of the Letters Patent as it affects the vital and valuable rights of the parties and causes serious injustice to them.

Consequent upon the interim order being made absolute, the entire proceedings, initiated against the respondent-writ petitioners under Section 7 of the Act, have come to a stand – still, for an order of *status quo* with regards possession of the subject land can only mean that the proceedings under the Act cannot be carried to their logical conclusion. It is not as if the appellants have invoked our jurisdiction, under Clause 15 of the Letters Patent, against the *ad interim* order passed by the Learned Single Judge on 18.05.2017. They have chosen to file a petition seeking vacation of the said interim order and, it is only against the order making the interim stay absolute, have they preferred the present appeal.

As a result of the order under appeal, the appellants are precluded from taking further action, under the A.P. Land Encroachment Act, to remove the encroachment over valuable

Government land. The order under appeal results in substantial injustice to the appellant, and affects their vital and valuable rights causing serious prejudice to them. We see no reason, therefore, to non-suit the appellants from availing their remedy under Clause 15 of the Letters Patent.

As noted hereinabove, the fact that the subject land is Government land is not in dispute. The challenge, in the writ petition, is to a show cause notice issued under Section 7 of the Act. This Court would, ordinarily, not interfere with a show cause notice, as it is always open to the respondent-writ petitioners to file their reply to the show cause notice, and satisfy the Tahsildar that action should not be taken, for their eviction from the subject land, under Section 6 of the Act.

While the Learned Single Judge has, in the order under appeal, referred to the fact that it is pursuant to a report from the 4th respondent that the official respondents sent a restricted recommendation, for fixation of market value, the 4th respondent in the writ petition is the Chief Commissioner of Land Administration, and not the M.L.A. The so-called public representative has not even been arrayed as a respondent in the writ petition.

Even otherwise, as has been noted by the Learned Single Judge in the order under appeal, the 2nd respondent in the writ appeal (2nd petitioner in the writ petition) himself was a Member of the Legislative Assembly from a recognised political party. The contentions, regarding political rivalry, are wholly irrelevant as it is not in dispute that the Tahsildar has initiated proceedings strictly in accordance with the provisions of the Act. As the jurisdiction of the Tahsildar to initiate proceedings is not put in issue in the

Writ Petition, this Court would not entertain a writ petition, under Article 226 of the Constitution of India, against a mere show cause notice.

Sri Vedula Srinivas, learned counsel for the respondent-writ petitioners, would submit that, since the land encroachment proceedings were initiated on the directions of the District Collector, the Tahsildar would have no option but to reject the reply which the respondent-writ petitioners may submit to the show cause notice. We see no basis for such an apprehension. Section 7 of the Act confers power on the District Collector, Tahsildar, and even the Deputy Tahsildar, to initiate proceedings under the Act. The District Collector has, instead of issuing a notice under section 7 of the Act himself, directed the Tahsildar to do so. That, by itself, does not amount to the Tahsildar having acted at the dictates of the District Collector, since the Act also confers on him the power to issue the notice under Section 7 of the Act. Suffice it to make it clear that, in case the respondent-petitioners submit a reply to the show cause notice within two weeks from today, the Tahsildar shall consider their reply independently, and without being influenced by the earlier directions of the District Collector or the observations made either in the order under appeal or in the order now passed by us; and shall pass a reasoned order in accordance with law. The interim order in W.P.No.17072 of 2017 therefore stands vacated and the Writ Appeal is allowed.

After we had dictated this judgment in open Court, Sri Vedula Srinivas, learned counsel for the respondent-writ petitioners, submitted that, in the light of the order now passed by

us, the cause in W.P.No.17072 of 2017 does not survive; and the writ petition itself may be disposed of. Learned Advocate General would agree for such an order to be passed.

In the light of the aforesaid order passed in the writ appeal, W.P.No.17072 of 2017 is also disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

23rd August, 2017

Note: Issue C.C by 28.08.2017

JSU

(J.UMA DEVI, J)



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI



Writ Appeal No.1185 of 2017 & Writ Petition No.17072 of 2017

Date: 23.08.2017

JSU