

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1965 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 W.P.M.P.No.48093 of 2017 in W.P. No.38740 of 2017 dated 17.11.2017.

By the order under appeal the Learned Single Judge, having regard to the order passed by the Supreme Court in Special Leave to Appeal (C) C.C.No.8917 of 2016 dated 12.05.2016, directed the 3rd appellant herein (5th respondent in the writ petition) to receive the document presented by the 1st respondent-writ petitioner and to register the same making it clear that any such registration would be subject to final orders in the Writ Petition and in the above case pending in the Supreme Court.

Against the order passed by a Full Bench of this Court in **Vinjamuri Rajagopala Chary vs. State of Andhra Pradesh**¹, the matter was carried in appeal to the Supreme Court and, by its order in SLP (Civil) C.C. No. 8917/16 dated 12.5.2016, the Supreme Court, while granting permission to file Special Leave to Appeal, condoning the delay and issuing notice, made it clear that registration could be done expressly subject to the final outcome of the Special Leave Petition.

Learned Government Pleader for Revenue would contend, not without justification, that pendency of the SLP before the Supreme Court against the order of the Full Bench in **Vinjamuri Rajagopala Chary**¹, and an interim order being passed therein, would not obliterate the law declared by the Full Bench; and, notwithstanding the fact that the order of the Full Bench is under challenge before the Supreme Court, the said order would bind both the Division Bench of this Court, and the Single

¹ 2016(1) ALT 550 (FB)

Judge, till the judgment of the Full bench is set aside by the Supreme Court. In **K. Venkata Reddy vs. Land Acquisition Officer**², a Division Bench of this Court observed:

“ When the matter came up before our learned brother Kodandaramayya, J., he felt a doubt **whether, having regard to the fact that the judgment of the Full Bench is the subject-matter of an appeal before the Supreme Court and the operation of the said judgment is suspended, the dicta laid down by the Full Bench would be binding on this Court and has to be followed, and referred the matter to the Bench. We are of the view that when a judgment of the High Court is the subject-matter of an appeal and the said judgment is suspended the only effect of such suspension is that that judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein are binding on all Courts including the single Judges and Division Benches of this Court.** The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered. We, however, do not feel any such doubt that in so far as the acquisition of the land of a person, whose holding is less than the ceiling area and is personally cultivating the same, is concerned, he is entitled to the payment of market value in lump sum. Payment of compensation in instalments is violative of the provisions of clause (2) of article 31-A(1) of the Constitution. ” (emphasis supplied)

In **Government of Andhra Pradesh vs. N. Rami Reddy**³, a Division Bench of this Court observed that, when a Court of appeal stays the operation of the judgment, it stays the further implementation as between the parties, of the operative portion thereof, and thereby the ratio of the said decision cannot be said to be wiped off. The observations of the Supreme Court, in this regard, are as under:

“ **It is now a well settled principle of law that the ratio of a judgment is the reason assigned in support thereof. While a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative**

² 1983 (67) STC 424

³ 2001(1) ALD 443(DB)

portion thereof, and thereby the ratio of the decision cannot be said to be wiped off.

.....This aspect of the matter is no longer res integra in view of the decision of a Three-Judge Bench of the Apex Court in **M/s. Sree Chamundi Mopeds Ltd. v. Church of SIT Association** (AIR 1992 SC 1439), wherein the Apex Court has laid down the law in the following terms:

"The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. **While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.** This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because **inspite** of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending....." (emphasis supplied)

Again in **Government of Andhra Pradesh vs. P. Gautam Kumar**⁴ a

Division Bench of this Court observed:

" The other aspect of the contention, ie., that on account of "stay of operation of the judgment", the Prakash Singh's case (supra), directive is itself not binding, is a contention that is wholly misconceived. Acceptance of this contention would lead to utter chaos and a de-construction of the principle of stare decisis, an essential integer of our system of law.

⁴ 2012 (6) ALD 458 (DB)

To illustrate, if a judgment of the Supreme Court is referred to and relied upon for conclusions or grant of relief in a judgment by a High Court; and the High Court judgment is appealed against and a stay granted by the Supreme Court, according to the learned Advocate-General the binding authority of the earlier judgment of the Supreme Court is rendered inoperative and the earlier Supreme Court judgment ceases to have a precedential value, during currency of the order of stay. Such a proposition is productive of universal and unmitigated mischief and therefore does not merit acceptance.

From the guidance derived from the precedents referred to, we are of the view that the stay of operation of the Yadav's case (supra), judgment only disables execution of the consequences of the judgment to the parties thereto. Grant of stay does not extinguish the norm(s) predicated in the judgment ” (emphasis supplied).

The Learned Single Judge has erred in granting a similar interim order, as was passed by the Supreme Court, as the law declared by the Full Bench in **Vinjamuri Rajagopala Chary**¹ would continue to bind this Court.

While Sri K.Suresh Kumar Reddy, learned counsel for the 1st respondent-writ petitioner, would seek to justify the order on other grounds, and would submit that the law declared by the Full Bench in **Vinjamuri Rajagopala Chary**¹ has no application to the facts of the present case, these contentions are neither reflected in the order under appeal, nor have they been dealt with by the Learned Single Judge.

As the said order was passed at the stage of admission, without the appellants being afforded an opportunity of being heard, we consider it appropriate to set aside the order under appeal, and restore the WPMP to file. The appellants shall file their counter affidavit within ten days from today. It is open to the learned counsel for the 1st respondent-writ petitioner to request the Learned Single Judge to take up the WPMP any day after ten days.

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)

(GUDISEVA SHYAM PRASAD, J)

20th December, 2017
JSU



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