

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37080 of 2015
and
M.P.Nos.1 & 2 of 2015
and
W.M.P.No.4698 of 2018

Greenpeace India Society
rep.by its Executive Director, Vinuta Gopal
New No.47/Old No.22, 2nd Cross Street,
Ellaiamman Colony, Gopalapuram,
Chennai - 600 086. ..Petitioner

vs

The District Registrar,
Chennai Central Registration District,
Chennai - 600 014. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and quash the order passed by the Respondent against the Petitioner in Proceeding No.6994/D2/2015 dated 04.11.2015, or any other appropriate writ, direction or order, and pass such other orders which this Hon'ble Court may deem fit and proper.

For Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.P.Giridharan
For Respondent : Mr.P.P.Purushothaman, GA

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O R D E R

The order dated 04.11.2015 issued by the District Registrar, Chennai (Central), is under challenge in the present writ petition.

2.The learned Senior Counsel appearing on behalf of the writ petitioner made a submission that the order impugned has been passed in violation of the principles of natural justice. The writ petitioner was not at all heard

properly and no opportunity of hearing was provided, enabling the petitioner to defend his case. Even the written representation submitted on behalf of the writ petitioner, has not been considered at all. Thus, there is an absolute violation of the principles of natural justice and therefore, the order impugned is to be scrapped.

3.The learned Senior Counsel is of an opinion that it is a fit case for remittance on the ground that the petitioner was not heard at all. However, this Court is of an opinion that even in the order, it is stated that if the petitioner feels aggrieved, they are at liberty to prefer an appeal before the Inspector General of Registration under Section 45 of the Societies Registration Act.

4.In this Context, this Court has to decide whether intermittent intervention under these circumstances are warranted or not. Where there is a statutory appeal is provided under the Act, then the same is to be exhausted by the aggrieved persons concerned. The rule is to exhaust the statutory appeal remedy and entertaining a writ petition is an exception.

5.This being the principles to be followed, the petitioner has to approach the Appellate Authority and this Court cannot waive the appeal remedy in a routine manner. The Appellate Authority is exercising the powers are of quasi in nature and they are empowered to adjudicate all the grounds including the grounds raised by the petitioner that the principles of natural justice has been violated. All other legal grounds raised by the writ petitioner is also to be adjudicated by the Appellate Authority by providing a proper opportunity to the respective parties concerned.

6.This being the scope of quasi judicial functionaries, this Court is of an opinion that frequent interference on merits and in respect of certain facts are not desirable and such complex facts and circumstances can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

7.Thus, it is, at the first instance, the parties must approach the Appellate authority provided under the statute. In the present case on hand, Section 45 of the Tamil Nadu Societies Registration Act, 1975 provides an appeal against an order passed by the original authority, namely, the District Registrar.

8.This being the factum of the case, this Court is of an opinion that the writ petitioner shall approach the Appellate authority under Section 45 of the Act and in the

event of preferring any such appeal, the Appellate authority is bound to take the same on file and after issuing notice to the respective parties, hear the matter by providing opportunity to all the parties concerned and pass orders on merits and in accordance with law.

9. In respect of exhausting the alternate remedy, this Court has settled the legal principles in W.P.No.22508 of 2017 dated 16.07.2018, in the case of M/s. Hyundai Motor India Limited Vs. The Deputy Commissioner of Income Tax, Transfer Pricing Officer and the relevant portions of the order are as under:

"21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained
1. In City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai

v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. Chhabildass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8)

SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbali and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors.

v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

10. Following the above legal principles, the writ petitioner is at liberty to approach the Appellate authority within a period of four weeks from the date of receipt of a copy of this order. On receipt of the copy of the appeal, the Appellate authority is bound to hear the matter on merits and decide the same in accordance with law. Till the appeal is taken up for hearing, the respondents are restrained from initiating any coercive action against the writ petitioners.

11.With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Deputy Registrar(CS)

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Sub Assistant Registrar

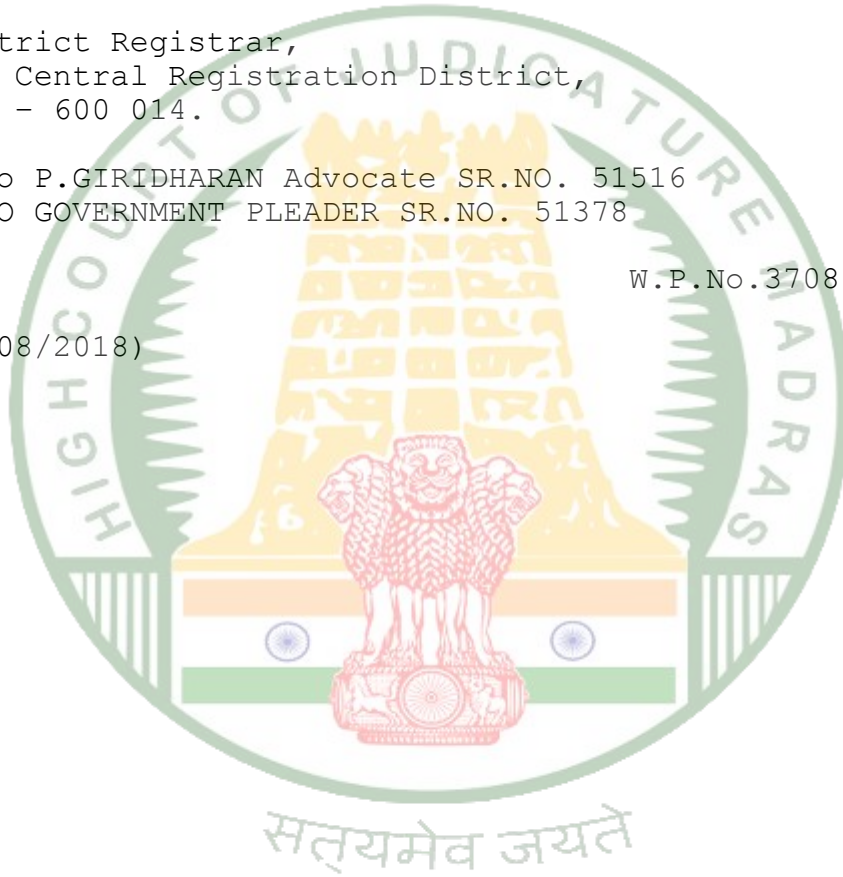
To

The District Registrar,
Chennai Central Registration District,
Chennai - 600 014.

+1 cc to P.GIRIDHARAN Advocate SR.NO. 51516
+1 CC TO GOVERNMENT PLEADER SR.NO. 51378

W.P.No.37080 of 2015

ASK(11/08/2018)



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