

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2728 of 2018
and
CMP No.22458 of 2018

Praxis Institute for Participatory Practices,
represented by its Chief Executive,
Mr.Tom Thomas,
5D, Calve Chateau Building,
808, Poonamallee High Road,
Kilpauk, Chennai - 600 010. Appellant

Vs.

1. State of Tamil Nadu,
Secretary to the Government,
Rural Development and
Panchayathi Raj Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Rural Development &
Panchayathi Raj,
Directorate of Rural Development & Panchayat Raj,
Panagal Maligai, West Saidapet,
Chennai - 600 015.

3. Union of India,
Represented by its Secretary,
Ministry of Rural Development,
Department of Rural Development,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.

4. Comptroller of Auditor General of India,
Deen Dayal Upadhyay Marg,
New Delhi - 110 124

5. Principal Accountant General,
No.361, Anna Salai,
Teynampet, Chennai - 600 018.

6. Social Audit Society of Tamil Nadu,
Represented by its Director,
Panagal Maaligai, West Saidapet,
Chennai - 600 015.

7. Mr.S.Annamalai Premkumar,
Director of Social Audit,
Social Audit Society of Tamil Nadu
Panagal Maaligai, West Saidapet,
Chennai - 600 015.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 16.11.2018 made in WMP No.35379 of 2018 in W.P.No.30320 of 2018.

Prayer in WP No.30320 of 2018 & WMP No.35379 OF 2018:-

Petition presented to this Court to issue a writ of quo warrant to the 7th respondent requiring him to show cause his authority to hold the post of Director of Social Audit Society of Tamil Nadu.

For Appellant : Mr.P.V.S.Giridhar

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

M/s.Praxis Institute for Participatory Practices, Rep. by its Chief Executive Mr.Tom Thomas, Chennai has filed W.P.No.30320 of 2018 for a writ of quo warranto against Mr.S.Annamalai Prem Kumar, Director of Social Audit Society of Tamilnadu, Chennai, requiring him, to show cause his authority to hold the office of Director of Social Audit Society of Tamil Nadu.

2. Pending disposal of the writ petition, in WMP No.35379 of 2018 in WP No.30320 of 2018, appellant / writ petitioner has sought for an injunction restraining the 7th respondent from functioning or acting as the Director of Social Audit Society of Tamilnadu, Chennai. On 27.11.2018, writ Court has ordered notice to the 7th respondent through Court and privately, returnable by 06.12.2018.

3. Contending inter alia that the writ Court has failed to take note of the grounds raised in the affidavit that the appointment of the 7th respondent frustrates the very object of the provision for social audit, which would endanger the

integrity and objectives of various schemes, writ Court having regard to the prima facie case and balance of convenience, ought to have granted interim injunction and thus the order of the writ Court, issuing notice in WMP No.35379 of 2018 in WP No.30320 of 2018, instead of granting interim order as prayed for is not correct, instant writ appeal is filed.

4. At the outset, when this Court raised an issue of maintainability of the writ appeal as against notice ordered in WMP No.35379 of 2018 in WP No.30320 of 2018, Mr.P.V.S.Giridhar, learned counsel for the appellant relying on a Hon'ble Division Bench decision of this Court in WA No.1410 of 2003 dated 27.03.2003 in the matter of Bharat Petroleum Corpn. Ltd., Vs. Petroleum Employees Union and others and another decision of the Allahabad High Court (Lucknow Bench) in Civil Revn. No.167 of 2001 dated 28.01.2003 in the matter of Smt. Urmila Devi and Others Vs. Nagar Nigam, submitted that an appeal against the notice issued by the writ Court while refusing to grant interim injunction is maintainable.

5. We have heard Mr.P.V.S.Giridhar, learned counsel for the appellant and perused the materials available on record.

6. Appellant has sought for a writ of quo warranto in WP No.30320 of 2018 and in WMP No.35379 of 2018, has sought of interim injunction. Writ Court has issued notice in the injunction petition.

7. In any application filed for an interim order upon satisfying the prima facie, balance of convenience, irreparable loss and injury likely to be caused, Court can pass appropriate interim orders. Merely because the Court has ordered notice in an interim application, it cannot be concluded that the Court has refused to grant an interim order. Court on receipt of any counter affidavit or materials placed or not, in the subsequent hearing or hearings, may or may not grant an interim order and the final order passed in such application by a Court is appealable.

8. As early as in 1981, the Hon'ble Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania & another reported in 1981 (4) SCC 8, while going through the provisions in the Civil Procedure Code, explained as to what (a) an intermediary / interlocutory order (2) preliminary order and (3) a final judgment, means the Hon'ble Supreme Court at paragraph Nos.115 to 117 has also explained, as to when an interlocutory order can be regarded as a judgment, which is appealable, and the same is extracted hereunder.

115. Thus, in other words 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. Similarly, orders passed by the Trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

116. We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to a judgment within the meaning of the Letters Patent. Suppose the Trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases, although the order passed by the trial Judge is purely discretionary and interlocutory it causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore, though interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the Letters Patent. This is what was held by this Court in Shanti Kumar's case (supra), as discussed above.

117. Let us take another instance of a similar order which may not amount to a judgment. Suppose the Trial Judge allows the plaintiff to amend the plaint by adding a particular relief or taking an additional ground which may be inconsistent with the pleas taken by him but is not barred by limitation and does not work serious injustice to the defendant who would have ample opportunity to disprove the amended plea taken by plaintiff at the trial. In such cases, the order of the Trial Judge would only be a simple interlocutory order without containing any quality of finality and would therefore not be a judgment within the meaning of cl. 15 of the Letters Patent."

9. The issue as to whether a writ appeal under clause 15 of the Letters Patent is maintainable as against an interim order granted in a writ petition, is no longer res integra. The same has been dealt by a Hon'ble Division Bench of this court in, The Anna University v. Narayanaguru International Institute of

Science and Technology (Regd. Trust) and others in W.A.(MD) No.466 of 2015 dated 14.05.2015. After considering the earlier decisions of this Court, the Hon'ble Bench, held that a writ appeal as against an interim order, which has not attained finality, granted in writ petition, is not maintainable.

10. A similar question came for consideration before a Hon'ble Division Bench of this court in R.Kannan v. Indcom Electronics Ltd., stating that the order impugned therein is not a judgment within the meaning of Clause 15 of Letters Patent of this court, a Hon'ble Division Bench, elaborately considered the matter, and held that the interim order made in the petition, which has not reached finality, determining the rights and liabilities between the parties cannot be said to have caused grave and substantial injustice to the appellant and will not fall within the meaning of the word 'judgment' occurring in Clause 15 of the Letters Patent. Accordingly, the Hon'ble Division Bench held that writ appeal was not maintainable against an interim order.

11. In Dr.Chinnaraj Joseph Jeyakumar Joseph Jeyakumar v. The Governing Counsel of American College and Others in W.A.No.540 of 2008, dated 02.08.2008, another Hon'ble Division Bench of this court held that ex-parte interim orders are not judgments for an aggrieved person to invoke the jurisdiction of the Appellate Court, under clause 15 of the Letters Patent. Adopting the same legal principle, W.A. No.2347 of 2012, dated 05.12.2012, was disposed of by the Hon'ble First Bench giving liberty to the appellant therein to file application to vacate the interim order.

12. In Hindu Nadar Educational Trust, represented by its Managing Trustee and others vs. Hindu Nadar Uravinmurai, Nilakottai, in W.A.(MD) No.312 of 2016 dated 22.02.2016, a Hon'ble Division Bench of which one of us, is a party (Justice S.Manikumar), held as follows:

"In the abovesaid circumstances, we would only clarify that the interim order, granted in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016 dated 05.01.2016, would be an interim order, till the miscellaneous petitions are finally heard and decided, along with the vacate stay petition. It shall not be an interim order, as prayed for, in the miscellaneous petitions, till the disposal of the writ petition. It could only be an interim order, till the parties to the lis, are put on notice, in the interim applications and heard. With the above clarification, we only request the Writ Court, to take up the injunction petitions in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of

2016, along with the vacate stay petition, and pass orders, as expeditiously as possible. Registry is directed to place the matter before the learned single Judge. Accordingly, the writ appeal is disposed of. No costs. Consequently, C.M.P(MD)No.1856 of 2016 is closed."

13. In Special Tahsildar No.III, Land Acquisition, Lignite Project, Neyveli, vs. V.Rangasamy Reddiar, reported in AIR 1988 Madras 162, this Court, has held as follows:-

"2.We are very much concerned to note a disturbing tendency that is fast developing now-a-days. In the recent past, we have come across several matters in which appeals are filed against ad interim exparte orders without resorting to the normal course of approaching the court which passed such orders and seeking appropriate further orders in spite of the law having been clearly laid down by a Division Bench of this Court in Abdul Shukoor v. Umachander AIR 1976 Mad 350. No doubt, that case arose out of an order emanating from a Subordinate Court. The ratio of the decision will apply with more force to an order passed by a learned single Judge of this Court. Moreover the ad interim orders are not judgments within the meaning of clause 15 of the Letters Patent.

3.What concerns us most is that the Government and statutory Corporations very often indulge in by-passing the only lawful course and adopting a course expressly disapproved by this court. We hold that the appeals ought not to have been filed in this case. The only course open to the Government was to approach the court in charge of civil miscellaneous petitions and pray for the passing of appropriate final orders in the civil miscellaneous petition. We hope that there will be no recurrence of similar instances in future. We make it clear that if we come across any such appeals in future, we will be constrained not only to dismiss such appeals, but also penalise the parties concerned with orders of heavy costs.'"

The above said decision has been followed in Syed Zehera Jabeen vs. S.Padmanabhan, reported in 1988 II MLJ 423 = 1989 (1) L.W 112, and Telecom Regulatory Authority of India vs. Bharti Airtel Ltd., reported in 2013 (5) CTC 264.

14. In Bharat Petroleum Corpn. Limited's case [cited supra], relied on by the learned counsel for the appellant, strike notice issued was challenged. The Hon'ble Division Bench, on the facts and circumstances and having regard to the provisions

viz., Sections 22, 23 and 24 of the Industrial Disputes Act, 1947, declared the same as illegal. The said judgment is wholly inapposite to the facts of this case.

15. In Smt. Urmila Devi's case [cited supra], relied on by the learned counsel for the appellant, taking note of the earlier decisions, a learned Single Judge of Allahabad High Court held that an order refusing to grant interim injunction is revisable.

16. In the case on hand, as stated supra, notice has been issued in the Miscellaneous Petition filed for injunction. We have observed that, at this stage it cannot be said that the Court has refused to pass an order. Only in a case, where a final order is passed in a proceedings, say for instance, an appeal maintainable. Thus, we make it clear that no appeal is maintainable against an order, where notice is issued. Judgments of the Hon'ble Supreme Court as well as this Court, support our view. There is no merit in the writ appeal. Hence, instant writ appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. the Secretary to the Government of TamilNadu,
Rural Development and Panchayathi Raj Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Rural Development &
Panchayathi Raj,
Directorate of Rural Development & Panchayat Raj,
Panagal Maligai, West Saidapet,
Chennai - 600 015.

3. The Secretary,
Union of India,
Ministry of Rural Development,
Department of Rural Development,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.

4. Comptroller of Auditor General of India,
Deen Dayal Upadhyay Marg,
New Delhi - 110 124

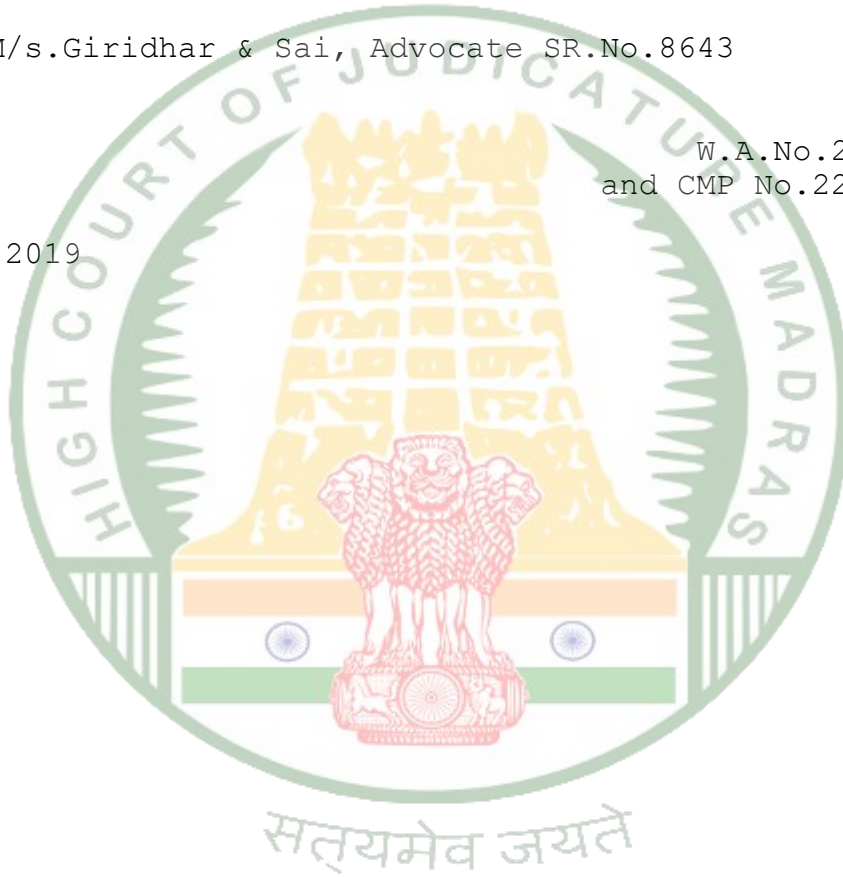
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Chennai - 600 015.

+1 cc to M/s.Giridhar & Sai, Advocate SR.No.8643

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NM(CO)
CSL/31.01.2019



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