

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.801 of 2018

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon’ble Court may be pleased to grant an order, direction or writ, more so in the nature of Writ of mandamus declaring the action of the Respondent 3 in threatening to demolish the house of the Petitioner in violation of the orders of this Hon’ble Court in W.P.No.38432 of 2017 dated 16.11.2017 as illegal, arbitrary, highhanded, violative of principles of natural justice and violative of Article 14, 21 and 300-A of Constitution of India apart from being violative of provisions of GHMC Act, and consequently to direct the Respondents not to resort to any detrimental action including demolition of the house of the Petitioner, and pass such other order or orders as this Hon’ble court may deem fit and proper in the circumstances of the case.”

[Reproduced verbatim]

2. I have heard the submissions of Sri *T.Bala Mohan Reddy*, learned counsel appearing for the petitioner, the learned Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent, and of Sri *Sampath Prabhakar Reddy*, learned Standing Counsel for the Greater Hyderabad Municipal Corporation, appearing for the respondents 2 & 3. I have perused the material record.

3. Learned counsel for the petitioner brings to the notice of this Court the earlier interim order of this Court, dated 16.11.2017, in W.P.No.38432 of 2017, which reads as under:

“Notice before admission returnable in four weeks.

1st Petitioner-company is aggrieved by the order of the Senior Divisional Engineer (South) dated 20.12.2017 where under the Company was directed to deposit an amount of Rs.50.00 Crores within 48 hours and a commitment to pay the balance amount of the demand i.e. Rs.372.44 crores and failing to deposit the amount within 48 hours along with plan of action to pay the balance amount, the Railways would reserve the right to take action including forcible removal of existing iron ore slurry pipe line from Railway premises.

Apart from making submissions on the tenability of such action by the Railways and that the 1st petitioner-company is not liable to pay the amount as there is no agreement of minimum guarantee existing after 2012, learned Senior Counsel Sri R.Raghunandana Rao contends that in the proceedings initiated by the State Bank of India alleging default of loans borrowed by the petitioner-company, the adjudicating authority (NCLT, Ahmedabad Bench, Ahmedabad in C.P.No. (I.B.) 39 / 7 / NCLT / AHM/2017, by order dated 02.08.2017 imposed moratorium on payments/recoveries from the company or making any financial obligations by the company and, therefore, 1st petitioner cannot deposit the amount as directed. He submits that the 1st petitioner has to approach the Ahmedabad Bench of NCLT to seek appropriate directions. He further submits that it would require sufficient time and in the meantime on the allegation of non payment of the amount demanded, if the Railways remove the existing iron ore slurry pipe line, it would cause irreparable hardship to the 1st petitioner as it involves huge expenditure and any tinkering/tampering of the pipe line would have serious consequences as it is operated with high pressure pumping system.

Learned standing counsel submits that the amount demanded is validly made and it permissible for the Railways to restrain any person from utilizing or accessing their properties in default of amounts due to Railways. He further submits that if what is contended by the learned senior counsel is correct, even this writ petition by the 1st petitioner-company is not maintainable.

Issue of maintainability of the writ petition has to be gone into after counter is filed. However, having regard to the

submission made by the learned senior counsel that to obtain orders from the company Law Tribunal, Ahmedabad bench, 1st petitioner requires reasonable time and in the meantime, if the pipe line is removed, it would cause great hardship and result in irretrievable consequence, balance of convenience is in favour of the petitioner-company.

The order impugned is suspended to the extent of decision to remove slurry pipe line in the Railway premises for a period of six (6) weeks. However, this order is subject top the petitioner-company approaching the Ahmedabad bench of NCLT(National Company Law Tribunal) within four (4) weeks.

Post the writ petition after six weeks.”

Learned counsel for the petitioner would submit that though the said order inures for the benefit of the petitioner, there is still a threat to demolish the subject property of the petitioner and, therefore, the petitioner has no other alternative, but to approach this Court.

5. Learned Standing Counsel appearing for the respondents 2 & 3, on instructions, would submit that in view of the interim orders of this Court afore-stated, the respondent authorities will not interfere with the subject property of the petitioner in obedience to the said orders of this Court.

6. Recording the submissions, the Writ Petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

Date: 4th January, 2018

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