

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.503, 505 & 509 of 2018

COMMON JUDGMENT: *(per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)*

These appeals, under Clause 15 of the Letters Patent, are preferred against the *ad-interim* orders passed by the learned Single Judge in WP MP No.52222 of 2017 in WP No.42103 of 2017, WP MP No.52177 of 2017 in WP No.42067 of 2017 and WP MP No.52161 of 2017 in WP No.42052 of 2017 respectively dated 18.12.2017. The 1st respondent in all these appeals filed WP Nos.42103, 42067 and 42052 of 2017 respectively on 11.12.2017 seeking a *mandamus* to declare the action of the Sub-Registrar in refusing to receive and register the sale deeds, relating to the subject property situated in Sy.No.315/1 of Proddatur Municipality and town, YSR Kadapa District with inbuilt houses, including the proceedings issued by the Commissioner of Endowments dated 24.06.2016 as illegal and arbitrary; and, consequently to direct the respondents to receive and register the document of sale pertaining to the subject property. By way of interim relief, the 1st respondent-writ petitioner sought a direction to the respondents to receive and register the document of sale pertaining to the subject property.

By the interim orders under appeals dated 18.12.2017 the learned Single Judge, relying on the earlier order passed in WP No.23821 of 2015 dated 14.08.2015, held that, since it was observed in the earlier order that the land in Sy.No.315 is private land to which the Commissioner of Endowments is a party, the Commissioner cannot now instruct the Sub-Registrar to refuse

registration of the documents, in the same survey number, on the plea that it is endowment land, without challenging the said order and having it set aside. The learned Single Judge passed an interim order directing the Sub-Registrar to ignore the communication of the Commissioner of Endowments stating that the subject land is endowment property, and proceed to register the same strictly in accordance with the provisions of the Indian Registration Act, 1908 and the Indian Stamp Act, 1899. The learned Single Judge further observed that such registration shall be subject to the result of the Writ Petition as well as the order dated 12.05.2016 in Special Leave to Appeal (C) No.8917 of 2016 & batch before the Supreme Court.

The letter dated 24.06.2016 was addressed by the Commissioner of Endowments to the Commissioner and Inspector-General, Registration and Stamps Department, furnishing the market value of the subject land. Even this letter shows the classification of the subject land as 'temple land', and that Sy.No.315/1 was prohibited from registration as per the proceedings dated 06.05.2014 of the Commissioner, Endowments Department.

Learned Government Pleader for Revenue (Assignment) would draw our attention to the subsequent proceedings of the Commissioner of Endowments dated 06.10.2016, informing the Commissioner & Inspector General, Stamps & Registration Department, that, in supercession of the earlier lists/data belonging to Charitable & Religious Institutions of YSR Kadapa District furnished to the Sub-Registrars, the list of properties, detailed in Annexure-III format, was being forwarded for necessary

further action. According to the learned Government Pleader, the subject land in Sy.No.315/1 is now included in the list of prohibited properties in terms of Section 22-A of the Registration Act; even without a challenge to its validity, the learned Single Judge had directed registration of the subject property; even in the order passed earlier by a Learned Single Judge of this court in WP No.23821 of 2015 dated 14.08.2015, on which reliance was placed in passing the interim order under appeal, the learned single Judge had not issued a *mandamus* to the respondents to register the property; the Learned Single Judge, in his order in W.P.No.23821 of 2015 dated 14.08.2015 had only directed the respondents to receive and process the document filed by the petitioner therein in accordance with the Registration Act and Indian Stamp Act; if the documents were in conformity with the provisions of the aforesaid documents, thereafter he should register and release the documents in accordance with the due procedure; and, in the event of the registering authority not being satisfied with compliance under the Registration Act or the Indian Stamp Act, appropriate refusal endorsement, together with reasons, should be recorded and communicated to the petitioner in terms of Section 71 of the Registration Act; though he had relied upon the order passed in WP No.23821 of 2015 dated 14.08.2015, the learned Single Judge had, in the order under appeal, issued a positive direction to the respondents, that too by way of an interim order which has the effect of allowing the Writ Petition itself; the said interim order, which has the effect of granting the main relief sought for in the Writ Petition, was passed without giving the appellants herein a reasonable opportunity of being heard i.e the

appellants were not afforded an opportunity to file their counter-affidavit; as a result they could not bring to the notice of the Learned Single Judge, the proceedings of the Commissioner of Endowments dated 26.10.2016; and the order of the learned Single Judge is, therefore, liable to be set aside.

On the other hand, Sri N. Pramod, learned counsel appearing on behalf of the 1st respondent-writ petitioner, would submit that this Court should not entertain an appeal against the interim order, as the appellants have the remedy of filing of their counter-affidavit, and seeking vacation of the interim order; the learned Single Judge has made it clear that registration of the document would be subject to the result of the Writ Petition as well as the order of the Supreme Court; as the Commissioner of Endowments has not questioned the validity of the order of the learned Single Judge, this appeal should not be entertained at the behest of Respondent Nos.1, 2 and 4 in the Writ Petition; and since this Court can always put the clock back, even if the document were to be registered in terms of the order under appeal, no prejudice would be caused to the appellants; and invocation of the appellate jurisdiction of this Court, under Clause 15 of the Letters Patent, is not justified.

We find no merit in the submission that the appeal filed by Respondent Nos.1,2 and 4 in the Writ Petition necessitates rejection on the sole ground that the 3rd respondent in the Writ Petition has not questioned the order passed by the learned Single Judge. The 1st appellant is the State of Andhra Pradesh rep. by the Principal Secretary, Department of Revenue. The letter dated 06.10.2016 is addressed to the Commissioner & Inspector General,

Stamps & Registration Department by the Commissioner, Endowments Department who is also an Officer of the State Government; the Endowments Department is a department of the Government of Andhra Pradesh; and since the appeal is preferred by the State of Andhra Pradesh, the mere fact that one of its Officers has not chosen to also question the order under appeal is of no consequence.

Section 22-A of the Registration Act relates to prohibition of registration of certain documents. Sub-section (1)(c) thereof stipulates that the documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease exceeding ten years in respect of immovable property, owned by Religious and Charitable Endowments falling under the purview of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, executed by persons other than those statutorily empowered to do so, are prohibited from registration.

The proceedings of the Commissioner of Endowments dated 06.10.2016 does appear to show that the subject land has been included in the list of prohibited properties in terms of Section 22-A of the Registration Act. As long as these lands continue to remain in the said list, Section 22(a)(i)(c) of the Registration Act would disable the Sub-Registrar from registering the documents. It is only if inclusion of the subject land, in the list of prohibited properties, is set aside could the Sub-Registrars thereafter have been directed to receive and register the documents relating to alienation or transfer of the subject land. The interim order passed by the learned Single Judge has the effect of allowing the main Writ Petition itself; and, ordinarily, such an interim order would

not be passed without giving, the respondents in the Writ Petition, a reasonable opportunity of being heard. While the present Writ Petition was filed on 11.12.2017, the interim order under appeal came to be passed within one week thereafter on 18.12.2017. We are satisfied, therefore, that the interim order under appeal was passed without giving the appellants herein a reasonable opportunity of being heard i.e of filing their counter-affidavit in the Writ Petition. As is submitted by the learned Government Pleader, not without justification, the order passed in WP No.23821 of 2015 dated 14.08.2015, on which reliance was placed while passing the interim order, is a final order passed in the main Writ Petition and is not an ad-interim order passed at the stage of admission. Even therein, the Sub Registrar was directed only to process the document in accordance with the Registration Act and the Indian Stamp Act and to receive the documents if they were in conformity with the provisions of the said Act; and if the registration authority was not satisfied with the compliance, then appropriate refusal endorsement, together with reasons, was directed to be recorded and communicated to the petitioner therein. Unlike the order in WP No.23821 of 2015 dated 14.08.2015, the learned Single Judge has, in the present case, directed the Sub-Registrar to ignore the communication of the Commissioner of Endowments, and register the document in accordance with the provisions of the Indian Registration Act and the Indian Stamp Act. Such a direction could not have been issued at the stage of admission of the Writ Petition, without the appellants herein (respondents in the writ petition) being given a reasonable opportunity of being heard.

With regards the submission that no prejudice has been caused to the appellants, justifying their invoking of jurisdiction of this Court under Clause 15 of the Letters Patent, it must be noted that the order of the learned Single Judge is a direction to the appellants herein to receive and register the document, contrary to Section 22-A of the Registration Act. An order directing them to disobey the law is, undoubtedly, an order causing them substantial prejudice; and they were, therefore, entitled to invoke the jurisdiction of this Court under Clause 15 of the Letter Patent.

While it is no doubt that the Supreme Court granted stay of Full Bench judgment of this Court in **Vinjamuri Rajagopala Chary vs. State of Andhra Pradesh**¹, the interim order passed by the Supreme Court, in SLP (Civil) No.8917 of 2016 and batch, dated 12.05.2016, would not obliterate the law declared by the Full Bench in **Vinjamuri Rajagopala Chary**¹, and the said order of the Full Bench would continue to bind a Division Bench of this 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

¹ 2016 (1) ALT 550 (FB)

² 1983 (67) STC 424

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 Division bench, 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 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

³ (2001(1) ALD 443 (DB)

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 in spite 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**

Kumar⁴ 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 deconstruction of the principle of stare decisis, an essential integer of our system of law.

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.

The orders under appeals must be, and are accordingly, set aside. WP MP No.52222 of 2017 in WP No.42103 of 2017, WP MP No.52177 of 2017 in WP No.42067 of 2017 and WP MP No.52161 of 2017 in WP No.42052 of 2017 respectively are all restored to file.

⁴ 2012 (6) ALD 458 (DB)

The appellants herein shall file their counter-affidavits, in the aforesaid three Writ Petitions, within three weeks from today. It is open to Sri N. Pramod, learned counsel for the 1st respondent-writ petitioner, to request the learned Single Judge to take up the WP MPs for hearing any day after three weeks.

The Writ Appeals stand disposed of accordingly. Miscellaneous petitions pending, if any, in these Writ Appeals shall also stand disposed of. No order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 27.03.2018

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90

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Date: 27.03.2018

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