

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT APPEAL Nos.36 AND 215 of 2018

Writ Appeal No.36 of 2018

Between:

State of A.P. rep. by its Prl. Secretary, Revenue, A.P.Secretariat,
Velagapudi, Amaravathi & Ors.

.... Appellants-Respondents 1, 3 & 4

And

Datla Krishna Varma & Ors.

.... Respondents 1 & 2 -Writ
Petitioners

DATE OF JUDGMENT PRONOUNCED: 03.04.2018.

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? -----
2. Whether the copies of judgment may be marked
to Law Reports/Journals -yes-
3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? -yes-

RAMESH RANGANATHAN, ACJ

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

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W.A.No.36 of 2018

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.... Appellants-Respondents 1, 3 & 4
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\$ Datla Krishna Varma & Ors.

.... Respondents 1 & 2 -Writ
Petitioners

! Counsel for Appellants-Respondents: Learned Government
Pleader for Registration and
Stamps.

^Counsel for respondents-writ petitioners: Sri Anand Kumar
Kapoor, Learned Counsel

< GIST:

> HEAD NOTE:

? Citations:

- 1) (1981) 4 SCC 8
- 2) (2001) 2 SCC 588
- 3) 2002 (5) ALD 1 (LB)
- 4) (1973) 2 SCC 705
- 5) (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285
- 6) 1952 SCR 28 : AIR 1952 SC 12
- 7) AIR 1983 SC 1272
- 8) (Judgment in Writ Appeal No.797 of 2016 dated 17.09.2016)
- 9) (1984) 2 SCC 436
- 10) (1985) 1 SCC 260
- 11) (1985) 3 SCC 217
- 12) (1995) 3 SCC 257
- 13) 1994 Supp (3) SCC 220
- 14) (2009) 14 SCC 48
- 15) (2009) 5 SCC 452
- 16) (2004)11 SCC 168
- 17) (1994) 5 SCC 380
- 18) (2006) 10 SCC 261
- 19) (2011) 14 SCC 227 : (2012) 4 SCC (Civ) 935 : (2012) 2 SCC (L&S) 890
- 20) 2002 (1) ALD 280
- 21) ILR 35 Mad. 1
- 22) 2016(1) ALT 550 (FB)
- 23) 1983 (67) STC 424
- 24) 2001(1) ALD 443(DB)
- 25) 2012 (6) ALD 458 (DB)
- 26) (1972) 2 SCC 200
- 27) 1942 AC 130
- 28) AIR 1960 SC 1156
- 29) 1990 Supp. SCC 727

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

WRIT APPEAL Nos.36 AND 215 of 2018

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

These two appeals are preferred, under Clause 15 of the Letters Patent, by respondents 1, 3 and 4 in W.P. No.38480 of 2017 aggrieved by the interim orders passed by the Learned Single Judge in WPMP. No.47767 of 2017 in W.P. No.38480 of 2017 dated 15.11.2017, and in WPMP No.47768 of 2017 in W.P. No.38480 of 2017 dated 15.11.2017.

Respondents 1 and 2 herein had filed the said Writ Petition seeking a mandamus to declare the proceedings of the District Collector, Visakhapatnam dated 23.08.2017, including Sy. No.187/4 for an extent of Ac.4.35 cts of Desapatrunipalem village in the list of prohibited properties under Section 22-A(i)(a) of the Registration Act, as wholly arbitrary and opposed to the provisions of the Registration Act and the rules made thereunder. A consequential direction was sought to the Sub-Registrar, Lankelapalem, Visakhapatnam to register the document presented by the petitioner for registration. By way of interim relief, respondents 1 and 2 herein sought an order (1) in W.P.M.P. No.47768 of 2017 to suspend the endorsement dated 23.08.2017 of the District Collector, Visakhapatnam; and (2) in W.P.M.P.No.47767 of 2017 to direct the Sub-Registrar, Lankelapalem to register the documents, presented by the petitioner for registration, in respect of the property purchased under the registered sale deed No.8629 of 2005.

In his order in WPMP No.47768 of 2017 in W.P. No.38480 of 2017, the Learned Single Judge observed that, *prima facie*, the order of the District Collector dated 23.08.2017, refusing to delete the subject lands from the notification issued under Section 22-A(i)(a) of the Registration Act, on the ground that they are assigned lands, could not be sustained because the said order did not mention when the alleged assignment was made, and whether there was a clause prohibiting alienation in the assignment patta granted to the assignees; the condition, prohibiting alienation, was introduced for the first time by G.O.Ms. No.1142 dated 18.06.1954; unless the assignment is shown to have taken place after the said date, on which point the order of the District Collector was deliberately silent, the District Collector could not treat the subject land as Government land, and include it in the notification issued under Section 22-A(i)(a) of the Act; and the second respondent did not also advert to the proceedings dated 13.07.2004 and 25.06.2004, issued by the Mandal Revenue Officer, Paravada stating that the said lands are private patta lands, and not assigned or government lands, though the said proceedings were relied upon by the petitioners in their application made to the District Collector. The Learned Single Judge granted interim suspension of the endorsement of the District Collector dated 23.08.2017 pending disposal of the Writ Petition.

By his order, in WPMP No.47767 of 2017 in W.P. No.38480 of 2017 dated 15.11.2017, the Learned Single Judge directed the Sub-Registrar, Lankelapalem, Visakhapatnam to receive the documents presented by the respondents-writ petitioners for registration, and consider the same strictly in accordance with the

provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908, without reference to the proceedings dated 23.08.2017 of the District Collector, Visakhapatnam, in view of the order dated 12.05.2016, within two months from the date of presentation of the document by the petitioners. The Learned Single Judge observed that any such registration would be subject to final orders in the Writ Petition, and in the case pending before the Supreme Court. While these two appeals have been preferred against the interlocutory orders passed in WPMP No.47768 of 2017 and WPMP No.47767 of 2017 respectively, the main Writ Petition i.e., W.P. No.38480 of 2017 is still pending adjudication before the Learned Single Judge.

Learned Government Pleader for Revenue (Assignment) would submit that the order of the District Collector, Visakhapatnam dated 23.08.2017 refers to the subject lands having been included in the list of prohibited properties vide his proceedings dated 08.07.2016; the Learned Single Judge has in effect granted, by way of interim relief, a relief which could only have been granted as a consequence of the Writ Petition being finally allowed; in view of Section 22-A of the Registration Act all those properties, included in the list of prohibited properties, cannot be subjected to registration; it is only if the proceedings of the District Collector dated 08.07.2016 is set aside, could the Learned Single Judge have granted a consequential direction to the Registrar to consider grant of registration of the subject property; such an order could not have been passed at the stage of admission of the Writ Petition; while W.P.No.38480 of 2017 was filed on 13.11.2017, the interim orders under appeal came to be

passed within two days thereafter on 15.11.2017; an ad-interim order at the stage of admission of the Writ Petition, which has the effect of allowing the Writ Petition itself, ought not to have been passed by the Learned Single Judge; and the orders under appeal necessitate being set aside.

On the other hand Sri Anand Kumar Kapoor, Learned Counsel for the respondent-writ petitioner, would submit that the Learned Single Judge has merely followed the interim order passed by the Supreme Court in granting the relief sought for in the Writ Petition; an appeal under Clause 15 of the Letters Patent is not maintainable against an ad-interim order; the rights, over the property in dispute, is not affected by the order under appeal; Section 52 of the Transfer of Property Act enables the Court to permit lis pendens sale; such lis pendens registration does not affect the right of parties; nowhere has the appellant stated, even subsequently, that the subject document is not genuine; the order under appeal is merely a facilitative order; the Learned Single Judge has imposed a condition that the registration is subject to the result of the Special Leave Petition and the Writ Petition; and an interim order, which is passed taking a cue from the interim order of the Supreme Court, is in furtherance of the order of the Supreme Court, and does not necessitate interference. Besides placing reliance on Section 52 of the Transfer of Property Act, Sri Anand Kumar Kapoor, Learned Counsel, would also rely on **Shah Babulal Khimji v. Jayaben D Kania**¹; **Central Mine Planning and Design Institute Ltd. v. Union of India**²; **B.F. Pushpaleela Devi**

¹ (1981) 4 SCC 8

² (2001) 2 SCC 588

v. State of A.P.³; **Rajender Singh v. Santa Singh**⁴; and **Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan**⁵.

In the impugned order dated 23.08.2017 the District Collector, Visakhapatnam, after referring to an earlier representation submitted by one Sri B. Radhakrishna Varma who had purchased land adjacent to that of the appellant-writ petitioner, held that Sri B. Radhakrishna Varma had purchased assigned lands which were prohibited from alienation under Section 3(1) of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977; as per Section 3(1) and 3(3) of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977; the list of prohibited properties under Section 22-A(1)(a) to (d) along with Form-III (Assigned lands list under Section 5(1) of the A.P. Assigned Lands (Prohibition of Transfer) Act) had been communicated to the registration department vide his office proceedings dated 08.07.2016; Sri B. Radhakrishna Varma had no valid title over the subject lands; hence his request for de-notification of the lands covered by Sy. No.80/4 and 187/4 of Desapatrunipalem village, from the list of prohibited properties, deserved no consideration; and it was, therefore, rejected. The Tahsildar, Parawada was directed to initiate necessary action, under the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977, by issuing notices in Forms I and II to the assignee/purchasers, since the applicant had purchased assigned land through registered documents, and had blatantly violated the provisions of the said Act. The Tahsildar was directed to report compliance within thirty days.

³ 2002 (5) ALD 1 (LB)

⁴ (1973) 2 SCC 705

⁵ (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285

In the affidavit, filed in support of W.P. No.38480 of 2017, the respondent-writ petitioner has stated that, aggrieved by the said endorsement, Sri B. Radha Krishna Varma had filed an appeal and, on its dismissal, had filed W.P. No.4293 of 2014, which was disposed of along with W.P. No.4271 of 2014 dated 25.04.2014, directing the Mandal Revenue Officer, Paravada, Visakhapatnam to verify the genuineness of the certificates issued earlier; if the certificates were genuine, he should then communicate his decision to the Sub-Registrar, Lankelapalem, Visakhapatnam, and also to the respondent-writ petitioner; if, according to the Mandal Revenue Officer, the status of the land, as per the revenue records, was not private patta land, the said information should then be furnished to the petitioner; such exercise should be completed within four weeks; the petitioners are simultaneous purchasers with Sri B. Radhakrishna Varma; on being made aware of the proceedings undertaken by him, and its likely impact on the petitioners, the first petitioner along with Sri B. Radhakrishna Varma had submitted a joint representation to the District Collector on 02.03.2017 and 20.07.2017 requesting him to delete the subject survey numbers from the list made under Section 22-A(1) of the Registration Act; and the District Collector had passed the order dated 23.08.2017 even without considering the orders passed by this Court earlier.

As noted hereinabove the District Collector, by his proceedings dated 23.08.2017, informed that the subject lands were included in the list of prohibited properties vide proceedings dated 08.07.2016. While the relief sought for in W.P.No.38480 of 2017 is to declare the proceedings of the District Collector dated

23.08.2017 as arbitrary and illegal, curiously the proceedings of the District Collector dated 08.07.2016, including these lands in the list of prohibited properties, has not even subjected to challenge in the Writ Petition. Section 22-A of the Registration Act relates to prohibition of registration of certain documents and, under sub-section (1) thereof, the classes of documents mentioned in clauses (a) to (e) thereunder are prohibited from registration. On the subject lands being included by the District Collector in the list of prohibited properties, the concerned Sub-Registrar was disabled thereafter from registering the documents in view of Section 22-A(1)(a) & (b) of the Registration Act. It is only if, and after, the subject lands are excluded from the list of prohibited properties, and the order of the District Collector including the subject lands in the said list is set aside, would the Sub-Registrar, thereafter, be entitled in law to register alienation of the subject lands.

Clause (a), of Section 22-A(1) of the Registration Act, are the documents relating to transfer of immovable property, the alienation or transfer of which is prohibited under any statute of the State or Central Government. Section 5 of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 prohibits registration of assigned lands. The District Collector, Visakhapatnam has included the subject lands in the list of prohibited properties on the ground that they are assigned lands. Whether the subject lands are, in fact, assigned lands justifying their inclusion in the list of prohibited properties; whether the proceedings dated 13.07.2004 and 25.06.2004, issued by the Mandal Revenue Officer, required the District Collector to abstain from including

the subject lands in the list of prohibited properties; whether the subject lands are assigned lands, as is claimed by the District Collector as justification for inclusion of these lands in the list of prohibited properties, or are private patta lands rendering its inclusion in the list of prohibited properties illegal, are all matters of examination in the Writ Petition after the appellants herein (respondents in the Writ Petition) are given a reasonable opportunity of filing their counter-affidavit.

By the interim order in WPMP No.47767 of 2017 dated 15.11.2017, which is under challenge in W.A. No.36 of 2017, the Sub-Registrar was directed to consider registration of the documents, without reference to the District Collector's proceedings dated 23.08.2017. The said interim order is not only a direction to the Sub-Registrar to violate the law (Section 22-A of the Registration Act), but also amounts to granting a relief which could only have been granted consequent upon the main relief, sought for in the Writ Petition, being granted. Such an order would, ordinarily, not be passed at the stage of admission without the appellants herein (respondents in the Writ Petition) being given an opportunity of filing their counter-affidavit.

An interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on a final determination of his rights. (**State of Orissa v. Madan Gopal Rungta**⁶; **Cotton Corporation of India v. United Industrial Bank Ltd**⁷; **The State of A.P. v. M/s.Maheswari Minerals**⁸). The main purpose of passing an interim order is to

⁶ 1952 SCR 28 : AIR 1952 SC 12

⁷ AIR 1983 SC 1272

⁸ (Judgment in Writ Appeal No.797 of 2016 dated 17.09.2016)

evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation, only in order that no irreparable injury is occasioned. The Court has to strike a delicate balance after considering the pros and cons of the matter to ensure that larger public interest is not jeopardized thereby. (**Siliguri Municipality v. Amalendu Das**⁹). Interim orders, which practically give the principal relief sought for in the writ petition, only for the reason that a prima-facie case has been made out, without considering the balance of convenience, the public interest and other considerations, should not be passed. (**Asstt. CCE v. Dunlop India Ltd.**¹⁰; **State of Rajasthan v. Swaika Properties**¹¹; **Bank of Maharashtra v. Race Shipping & Transport Co. (P) Ltd**¹²; **M/s.Maheswari Minerals**⁸).

Interim orders are, ordinarily, made to maintain the status quo so that the ultimate relief to be granted, to the party approaching the Court, may not become futile. (**Bihar Public Service Commission v. Shiv Jatan Thakur (Dr)**¹³). Interim relief is granted during the pendency of proceeding so that, while granting final relief, the court is not faced with a situation of the relief having become infructuous or that, during the pendency of the proceeding, an unfair advantage has been taken by the party in default or against whom interim relief is sought. The object behind granting interim relief is to maintain the status quo so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the proceedings. (**Cotton Corporation of India**⁷). It is settled legal position that, by

⁹ (1984) 2 SCC 436

¹⁰ (1985) 1 SCC 260

¹¹ (1985) 3 SCC 217

¹² (1995) 3 SCC 257

¹³ 1994 Supp (3) SCC 220

way of interim relief, the final relief should not be granted till the matter is decided one way or the other, (**Mehul Mahendra Thakkar v. Meena Mehul Thakkar**¹⁴; **All India Anna Dravida Munnetra Kazhagam v. Govt. of T.N.**,¹⁵), as interlocutory orders are made in aid of final orders and not vice versa. (**Shipping Corporation of India Ltd. v. Machado Brothers**¹⁶; **Kavita Trehan v. Balsara Hygiene Products Ltd**¹⁷; and **Pitta Naveen Kumar v. Raja Narasaiah Zangiti**¹⁸). An interim order should not be of such a nature as to result in the writ petition being finally allowed at an interim stage nor should relief be granted, at the interlocutory stage, by which the final relief, which is asked for and is available at the disposal of the matter, is granted. (**UPSC v. S. Krishna Chaitanya**¹⁹; **M/s. Maheswari Minerals**⁸).

While W.P. No.38480 of 2017 was filed on 13.11.2017, the ad-interim orders under appeal came to be passed on 15.11.2017 just two days after the Writ Petition was filed. It is evident, therefore, that the interim order, which has the effect of allowing the Writ Petition itself at the admission stage, was passed in W.P.M.P. No.47767 of 2017 without the appellants herein (respondents in the Writ Petition) being given a reasonable opportunity of being heard i.e., of filing their counter-affidavit.

Clause 15 of the Letters Patent provides for an appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction. An appeal does not lie to the Division bench of the same High Court against every order passed by a Single Judge of

¹⁴ (2009) 14 SCC 48

¹⁵ (2009) 5 SCC 452

¹⁶ (2004) 11 SCC 168

¹⁷ (1994) 5 SCC 380

¹⁸ (2006) 10 SCC 261

¹⁹ (2011) 14 SCC 227 : (2012) 4 SCC (Civ) 935 : (2012) 2 SCC (L&S) 890

the High Court. It is only against a “*judgment*” would an intra-Court Appeal lie. The Letters Patent jurisdiction is not attracted and available if the judgment is passed by the High Court in the exercise of its appellate jurisdiction in respect of a decree or order made in the exercise of the appellate jurisdiction by a Court subject to the superintendence of the said High Court. It is also not attracted and available if the order is made under the revisional jurisdiction of the High Court, and it is also not attracted in respect of a sentence or order made or passed in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act or in the exercise of criminal jurisdiction. If the order complained of is not a “*judgment*”, the appellate jurisdiction of the High Court, under Clause 15 of the Letters Patent, is not attracted and available. (**Shah Babulal Khimji**¹; **H. Kondal Reddy v. Central Bank of India, Hyderabad**²⁰; **B.F. Pushpaleela Devi**³).

The word ‘*judgment*’, in Clause 15 of the Letters Patent, should receive a much wider and more liberal interpretation than the word ‘*judgment*’ used in the Code of Civil Procedure. At the same time, all orders passed by a trial Judge would not amount to a judgment, otherwise there would be no end to the number of orders which would be appealable under the Letters Patent. The word ‘*judgment*’ has, undoubtedly, a concept of finality in a broader and not a narrower sense. (**Shah Babulal Khimji**¹; **Central Mine Planning and Design Institute Ltd.**²).

A “*judgment*” can be of three kinds: (1) a final judgment.—in this category falls a judgment by which the suit, or action, brought

²⁰ 2002 (1) ALD 280

by the plaintiff is dismissed or decreed in part or full; (2) a preliminary judgment.—this category is sub-divided into two classes: (a) where the trial Judge, by an order, dismisses the suit, without going into the merits of the suit, and only on a preliminary objection raised by the defendant/respondent on the ground of maintainability; (b) where maintainability of the Suit is objected on the ground of bar of jurisdiction, e.g., *res judicata*, a manifest defect in the suit, absence of notice under Section 80 and the like; and (3) intermediary or interlocutory judgment.—in this category fall orders referred to in clauses (a) to (w) of Order 43 Rule 1 and also such other orders which possess the characteristics and trappings of finality, and may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. **(Shah Babulal Khimji¹; Central Mine Planning and Design Institute Ltd.²).**

Under the third category, every interlocutory order cannot be regarded as a “*judgment*”. 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. **(Shah Babulal Khimji¹; Central Mine Planning and Design Institute Ltd.²).** Interlocutory orders, in order to be a “*judgment*”, must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. **(Shah Babulal Khimji¹).**

The following are the tests to assess the import and definition of the word '*judgment*' as used in Clause I5 of the Letters Patent. (1) It is not the form of adjudication which is to be seen

but its actual effect on the suit or proceeding; (2) If, irrespective of the form of the suit or proceeding, the order impugned puts an end to the suit or proceeding it doubtless amounts to a judgment; (3) Similarly, the effect of the order, if not complied with, is to terminate the proceedings, the said order would amount to a judgment; (4) Any order in an independent proceeding which is ancillary to the suit (not being a step towards judgment) but is designed to render the judgment effective can also be termed as judgment within the meaning of the Letters Patent. (5) An order may be a judgment even if it does not affect the merits of the suit or proceedings or does not determine any rights in question raised in the suit or proceedings. (6) An adjudication based on a refusal to exercise discretion the effect of which is to dispose of the suit, so far as that particular adjudication is concerned, would certainly amount to a judgment within the meaning of the Letters Patent. **(T.V.Tuljaram Row v. M.K.R.V. Alagappa Chettiar²¹; Shah Babulal Khimji¹).**

In order to determine the question, whether an interlocutory order passed by a Judge of a High Court falls within the meaning of “*judgment*”, for purposes of the Letters Patent, the test is whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case. **(Shah Babulal Khimji¹; Central Mine Planning and Design Institute Ltd.²).**

In the present case, the effect of the interim order under appeal (i.e in W.P.M.P.No.47767 of 2017) is to grant the main relief sought for in the Writ Petition. The said order has the traits and

²¹ ILR 35 Mad. 1

trappings of finality and has decided the question in controversy in the Writ Petition. It also requires the Sub-Registrar to consider the respondent-writ petitioners application for registration in violation of Section 22-A of the Registration Act, and thereby works serious injustice to the appellants herein. We are satisfied, therefore, that the interim order under appeal, in W.P.M.P. No.47767 of 2017 dated 15.11.2017, constitutes a '*judgment*' within the meaning of Clause 15 of the Letters Patent, the appellants herein are entitled to invoke our jurisdiction against the said order, and the appeal in W.A.No.36 of 2018, against the ad-interim order passed in W.P.M.P. No. 47767 of 2017 in W.P.No.38480 of 2017 dated 15.11.2017, is maintainable under Clause 15 of the Letters Patent.

It is no doubt true that, against the order passed by a Full Bench of this Court in **Vinjamuri Rajagopala Chary v. State of Andhra Pradesh**²², 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**²², 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

²² 2016(1) ALT 550 (FB)

both the Division Bench of this Court, and the Single Judge, till the judgment of the Full bench is set aside by the Supreme Court.

In **K. Venkata Reddy v. Land Acquisition Officer**²³, 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 v. N. Rami Reddy**²⁴, 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

²³ 1983 (67) STC 424

²⁴ 2001(1) ALD 443(DB)

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**

Kumar²⁵ 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.

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, in W.P.M.P.No.47767 of 2017 dated 15.11.2017, as was passed by the Supreme Court, as the law declared by the Full Bench in **Vinjamuri Rajagopala Chary**²² would continue to bind this Court.

Reliance placed by Sri Anand Kumar Kapoor, Learned Counsel for the respondent-writ petitioners, on Section 52 of the Transfer of Property Act, 1882, is also of no avail. Section 52 stipulates that, during the pendency in any Court in which any

²⁵ 2012 (6) ALD 458 (DB)

right to immovable property is directly and specifically in question, the property cannot be transferred, or otherwise dealt with, by any party to the suit or proceedings so as to affect the rights of any other party thereto. An exception thereto is where the transfer is made under the authority of the Court, and on such terms as it may impose.

Lis pendens literally means a pending suit, and the doctrine of lis pendens has been defined as the jurisdiction, power, or control which a court acquires over the property involved in a suit pending the continuance of the action, and until final judgment therein. (**Corpus Juris Secundum (Vol. LIV, p. 570)**). Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts, and their control over the subject-matter of litigation, so that parties litigating before it may not remove any part of the subject-matter outside the power of the Court to deal with it and thus make the proceedings infructuous. (**Rajender Singh⁴; Jayaram Mudaliar v. Ayyaswami²⁶**).

The question which necessitates examination in the present case is not whether this Court has the power, under Article 226 of the Constitution of India, to grant a relief of the nature sought for in the Writ Petition, but whether an interim order, which has the effect of granting the main relief sought for in the Writ Petition, could have been passed without the appellants (respondents in the Writ Petition) being given a reasonable opportunity of being heard by filing their counter-affidavit. While the High Court may have the power to permit transfer of property during the pendency of proceedings before it, and upon such terms as it may impose, the

²⁶ (1972) 2 SCC 200

question is not regarding existence of such a power with the High Court but regarding its exercise, and whether an interim order, directing the Sub-Registrar to receive and register the document for alienation of immovable property, could have been passed without giving the official respondents in the Writ Petition a reasonable opportunity of filing their counter-affidavit, more so as the interim relief sought for, and granted, has the effect of allowing the Writ Petition itself, and in the main relief sought for in the Writ Petition being granted.

It is no doubt true that a Division bench would, ordinarily, not interfere with the exercise of discretion by the Learned Single Judge in granting interim relief. The law as to the reversal by a Court of Appeal of an order made by the Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case. (**Osenton (Charles) & Co. v. Johnston**²⁷; **Printers (Mysore) (P) Ltd. v. Pothan Joseph**²⁸; **Mohd. Mehtab Khan**⁵; **Wander Ltd. v. Antox India (P) Ltd.**²⁹).

Where the appeals before the Division Bench are preferred against the exercise of discretion by the Single Judge, the appellate court will not interfere with such exercise of discretion by the court of first instance, and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored settled principles of law regulating grant or refusal of interlocutory orders. An appeal against exercise of discretion is said to be an appeal on

²⁷ 1942 AC 130

²⁸ AIR 1960 SC 1156

²⁹ 1990 Supp. SCC 727

principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would, normally, not be justified in interfering with the exercise of discretion under appeal solely on the ground that, if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably, and in a judicious manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. The appellate court would not interfere with the exercise of discretion by the learned trial Judge unless such exercise is found to be palpably incorrect or untenable or if the view taken by the Learned Single Judge is not a possible view. (**Wander Ltd.**²⁹; **Mohd. Mehtab Khan**⁵).

In the present case, the interim order under appeal, directing the Sub-Registrar to consider registering the document without reference to the District Collector's proceedings dated 23.08.2017, has the effect of granting the main relief sought for in the Writ Petition, though it is settled law that, ordinarily, the final relief sought for in the Writ Petition should not be granted, by way of interim relief, and the matter should await a final decision one way or the other. This contention of Sri A.K. Kapoor, Learned Counsel for the respondent-writ petitioner, also necessitates rejection.

Viewed from any angle, we are satisfied that the Learned Single Judge ought not to have, at the stage of admission of the Writ Petition, granted the interim relief, sought for in W.P.M.P. No.47767 of 2017, which has the effect of allowing the Writ Petition

itself even without giving the appellants herein (respondents in the Writ Petition) a reasonable opportunity of filing their counter-affidavit.

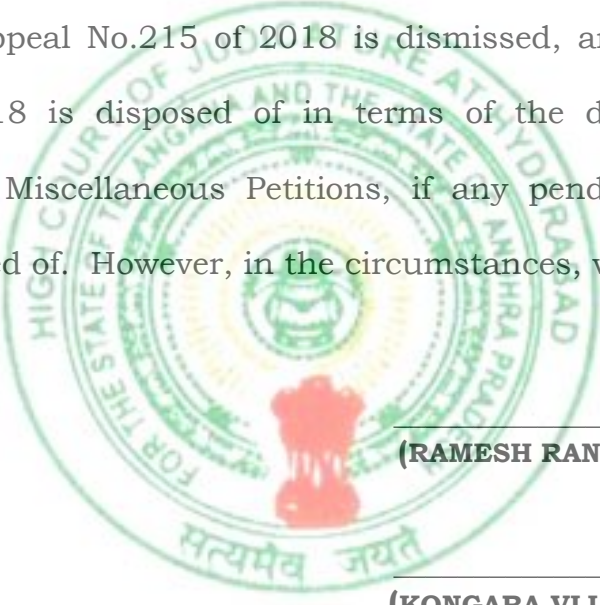
By the interim order passed by the Learned Single Judge, in WPMP No.47768 of 2017 in W.P.No.38480 of 2017 dated 15.11.2017, the endorsement of the District Collector dated 23.08.2017 was suspended. The said interim order is merely a workable arrangement to ensure that no irreparable injury is otherwise occasioned. As a result of the said order, status-quo is sought to be maintained so that, in the meanwhile, no further action is taken pursuant to the endorsement dated 23.08.2017 whereby the Tahsildar was directed to initiate action under the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 by issuing Form-I and Form-II notices to the assignees/purchasers on the ground that assigned land had been purchased, through a registered document, in violation of the provisions of the said Act.

We may not be understood to have upheld the said interim order. All that we have held is that the said order, in WPMP No.47768 of 2017 in W.P.No.38480 of 2017 dated 15.11.2017, may not constitute a “*judgment*” justifying exercise of jurisdiction, under Clause 15 of the Letters Patent, at this stage. Suffice it to make it clear that the order now passed by us shall not disable the appellants, after they have filed their counter-affidavit in W.P.No.38480 of 2017, to seek vacation of the interim order passed in WPMP No.47768 of 2017 in W.P.No.38480 of 2017 dated 15.11.2017. Any such application, filed by the appellants later,

shall be decided on its merits uninfluenced by any observations made in this order.

The order passed in WPMP No.47767 of 2017 in W.P.No.38480 of 2017 dated 15.11.2017 is set aside and WPMP No.47767 of 2017 is restored to file. The appellants herein shall file their counter-affidavit in W.P.No.38480 of 2017 within three weeks from today. It is open to Sri Anand Kumar Kapoor, Learned Counsel for the petitioners, to request the Learned Single Judge to take up WPMP No.47767 of 2017 for hearing any day after three weeks from today.

Writ Appeal No.215 of 2018 is dismissed, and Writ Appeal No.36 of 2018 is disposed of in terms of the directions given hereinabove. Miscellaneous Petitions, if any pending, shall also stand disposed of. However, in the circumstances, without costs.



(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 03.04.2018

Note: L.R. copy to be marked.
B/O
MRKR/CS