

HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.31165 of 2018

ORDER: (per SVB, J)

Heard Sri Y. Srinivasa Murthy, learned counsel for the petitioner and learned Assistant Solicitor General for respondent No.1, learned Government Pleaders for General Administration; Industries; Mines & Geology and Revenue (AP) for respondent Nos.2; 3; 4 and 5 & 7, respectively, Sri G. Ramachandra Rao, learned Standing Counsel for the Andhra Pradesh Pollution Control Board appearing for respondent No.6 and Sri O. Manohar Reddy, learned counsel for respondent No.8.

The petitioner prays for the following relief:

“For the reasons stated in the accompanying affidavit, it is therefore just and essential that this Hon’ble Court may be pleased to issue a writ, order or directions more particularly one in the nature of the writ of Certiorari calling for the records relating to the order passed by the Hon’ble National Green Tribunal, Principal Bench, New Delhi, on 01.08.2018, in Application No.384 of 2018 to quash the same and to consequently direct the respondent officials to protect the water body popularly known as KUMMARA KUNTA, situated in Survey No.1043 of Niduzuvvi Village, Yerraguntla Mandal, YSR Kadapa District, Andhra Pradesh.”

The National Green Tribunal through the order under challenge has held that:

“The Learned Counsel for Respondent No. 8 puts in appearance and submitted that subject matter of this Original Application is the same which has been raised before the Hon’ble High Court of Andhra Pradesh and Telangana. Further, he submits that the High Court had passed an interim order on 26th July, 2018 in W.P. (PIL) No: 130 of 2018 which reads as under:

“Learned Assistant Solicitor General appears for respondent nos.1, 6, 7 and 8; learned Government Pleader for Revenue (AP) appears for Respondent nos.2, 3, 9 and 11; learned Government Pleader for Mines and Geology (AP) appears for respondent nos.4 and 5; learned Standing Counsel for Andhra Pradesh Pollution Control Board appears for respondent No.10; and learned Counsel Sri O. Manohar Reddy appears for respondent no.12.

Learned counsel for respondent No.12 has placed before us the endorsement of the Tahsildar, Yerraguntla Mandal, with N.Dis.No.26/2018, dated 23.06.2018, which identifies the Kummara Kunta. The purpose of issuing that endorsement is in connection with protection of Kummara Kunta along with Buffer Zone of 15 metres radius.

For the time being, respondent No.11 – District Collector, is directed to ensure that no construction activity whatsoever, including of placing any boundary wall, shall be carried out in relation to the said parcel, which is identified as Kummara Kunta along with Buffer Zone of 15 metres radius and that the said water body is maintained in as is where is condition as on today for a period of four weeks.

The respondents may place their counter affidavits, if so advised, within that period. Post after four weeks.”

We have also been informed that the said Writ Petition is still pending and would be listed after four weeks.

On perusal of the order of the High Court dated 26th July, 2018 and the present Original Application, it is crystal clear that the subject matter of the two Applications is substantially the same except the individual Petitioners. Further, it is noteworthy that before the High Court, it had been asserted that:

“Without noticing the compliance of mandatory provisions of the relevant statutes by the State and its instrumentalities as illegal,

arbitrary and unconstitutional and violative of the Statutory provisions of the enactments of Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, and consequently direct respondents 1 to 11 to cancel all the approvals, permissions, grants etc., made in favour of the 12th respondent.”

In the aforesaid circumstances, we are of the considered opinion that by name change of Petitioner is not permissible for filing of Petitions before two different forums when the subject matter and relief sought are exactly same. Filing parallel proceedings cannot be entertained or permitted. The instant case before the High Court was in the name of PIL and here in the name of Section 14 of the NGT Act. The controversy raised, the issue involved and the prayer sought does not have substantial difference.

Consequently, Original Application No.384 of 2018 stands disposed of.”

To-day by a separate order in WP (PIL).No.130 of 2018 is disposed of. Having regard to the order in WP (PIL).No.130 of 2018, the very basis for the present impugned order is removed. Hence, the order under challenge is set aside having regard to the order passed in WP (PIL).No.130 of 2018. The petitioner is given liberty to workout the remedy before the National Green Tribunal and to obtain orders as may be necessary in the appeal the petitioner files in this behalf. It is needless to observe that National Green Tribunal can take independent view in all the

interlocutory applications filed by the petitioner before it and passes orders as may be available.

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 11.12.2018

S.V. BHATT, J

Note: issue c.c. in three days.

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