

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

L.P.A.No.1 of 2018

Subba Reddy Charities,
by Managing Trustee,
A.J.Yuvaraj Reddy

... Appellant

Vs.

1.Sengottayan,
Assistant Commissioner,
Zone x11, Corporation of Chennai,
Alandur, Chennai-16.

2.Arputha Raj,
Assistant Revenue Officer,
Zone 12, Corporation of Chennai,
Alandur, Chennai-16.

3.A.Sankaranarayanan

4.K.Joseph

5.Kalpana

6.V.Sakthivel

7.Swayamprabha

8.R.Sivaraman

.... Respondent

Prayer:- This Letter Patent Appeal is filed against the order, dated 12.08.2016 of the learned Single Judge of this Court, made in Cont.P.No.1831 of 2016 in WP.NO.23776/15.

Prayer in WP.NO.23776/15:

Petition Praying to issue a Writ o Mandamus directing the Respondents 1-4 to consider the representations in letters dated 31-3-08 1-4-08 12-01-2015 12-12-2014 9-2-2014 15-04-2015 & 1-7-2013 - 7-2-2015 sent by the petitioner as the trespasser had been cheating the trust and court without paying rent and spaying tax secretly in Connivance with corrupt official in zone 12.

For Appellant : Party-in-Person

For Respondents 6 to 8 : Mr.R.Varalakshmi

O R D E R

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

The order, dated 12.08.2016 made in Cont.P.No.1831 of 2016, impugned by way of this Letter Patent Appeal, is as follows:

"This court by order dated 16.10.2015 in WP.No.23766 of 2015, recording the submission of the Petitioner, who confined his prayer to consider the representations submitted by him before the Respondent, directed the Respondent to consider the representations of the Petitioner, after giving due opportunity to the parties concerned. Accordingly, after receipt of the order copy, the Respondent, after issuing notice to the Petitioner as well as other interested parties, conducted a detail enquiry and thereafter, passed an order dated 1.2.2016 on the representations of the Petitioner. Therefore, the learned counsel for the Respondents 1 and 2 has submitted that the direction of this court has been complied with properly and hence, this contempt petition may be closed.

2. The Petitioner/Party in person now seeks to challenge the said order dated 1.2.2016 by separate WP impleading necessary parties. It is always open to the Petitioner to challenge the said order by impleading all the necessary parties. Accordingly, this contempt petition is closed. No costs."

2. Petitioner/Party-in-Person has submitted that aggrieved by the order, dated 01.02.2016, a writ petition has been filed before the learned Single Judge of this Court. Prima facie, the Petitioner/Party-in-Person, who has the benefit of challenging the order, dated 01.02.2016, by filing a separate writ petition, cannot assail the correctness of the order, dated 12.08.2016, made in the Contempt Petition No.1831 of 2016.

3. Even on the merits of the order, we find from the material on record that when W.P.No.23766 of 2015, came up for hearing, Petitioner/Party-in-Person had confined his prayer only to consider the representation submitted by him, before the respondents, who in turn, considered the representation, after giving due opportunity to the parties, and passed an order, dated 01.02.2016.

4. In Contempt Petition No.1831 of 2016, Petitioner/Party-in-Person has submitted that he would challenge the order, dated 01.02.2016, which has been done, by filling a writ petition. Petitioner/Party-in-Person, cannot approbate and reprobate. Reference can be made to

(i). In *New Bihar Biri Leaves Co. v. State of Bihar*, reported in 1981 (1) SCC 537, at paragraphs 48 and 49, the Hon'ble Supreme Court held as follows:-

"48. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is *qui approbat non reprobat* (one who approbates cannot reprobate). This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction (*Per Scrutton, L.J., Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co.*, reported in 1921 2 KB 608 *Douglas Menzies v. Umphelby*, reported in 1908 AC 224, 232 see also *Stroud's Judicial Dictionary*, Vol. I, p. 169, 3rd Edn.).

49. The aforesaid inhibitory principle squarely applies to the cases of those petitioners who had by offering highest bids at public auctions or by tenders, accepted and worked out the contracts in the past but are now resisting the demands or other action, arising out of the impugned Condition (13) on the ground that this condition is violative of Articles 19 (1)(g) and 14 of the Constitution. In this connection, it will bear repetition, here, that the impugned conditions though bear a statutory complexion, retain their basic contractual character also. It is true that a person cannot be debarred from enforcing his fundamental rights on the ground of estoppel or waiver. But the aforesaid principle which prohibits a party to a transaction from approbating a part of its conditions and reprobating the rest, is different from the doctrine of estoppel or waiver."

(ii) In *R.N.Gosain v. Yashpal Dhir*, reported in 1992 (4) SCC 683, at paragraph 10, the Hon'ble Supreme Court held as follows:-

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one

time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See: *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.*, reported in 1921 (2) KB 608, 612 (CA) Scrutton, L.J.] According to Halsbury's Laws of England, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508)

(iii). In *I.T. Commissioner v. Firm Muar*, reported in AIR 1965 SC 1216, at paragraph 13, the Hon'ble Supreme Court held as follows:-

".....The doctrine of "approbate and reprobate" is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provisions of a statute."

(iv). In *Prashant Ramachandra Deshpande Vs. Maruti Balaram Haibatti*, reported in 1995 Supp (2) 539, the principle of "approbate and reprobate" has been explained. At Paragraph 2, the Hon'ble Supreme Court, held thus:-

"2.Similarly, on the principle that a person may not approbate and reprobate, "a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais. The principle that a person may not approbate and reprobate expresses two propositions: (1) that the person in question, having a choice between two courses of conduct, is to be treated as having made an election from which he cannot resile, and (2) that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent". Vide Halsbury's Laws of England, 4th Edn., Vol. 16, para 1507."

(v). In *Cauvery Coffee Traders, Mangalore, Vs. Hornor Resources (International) Company Limited.*, reported in 2011 (10) SCC 420, the Hon'ble Supreme Court, at paragraphs 33 to 35, held as follows:-

"33. In *R.N. Gosain v. Yashpal Dhir*, reported in 1992 (4) SCC 683 = 2011 (1) SCC (Civ) 451, this Court has observed as under: (SCC pp.687-88, para 10)

"10. Law does not permit a person to both approbate and reprobate. This principle is based

on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". 34. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. (Vide Nagubai Ammal v. B. Shama Rao, reported in AIR 1956 SC 593, CIT v. V.M.R.P. Firm Muar, reported in AIR 1965 SC 1216, Maharashtra SRTC v. Balwant Regular Motor Service, reported in AIR 1969 SC 329, R. Deshpande v. Maruti Balaram Haibatti, reported in 1998 (6) SCC 507 = AIR 1998 SC 2979, Babu Ram v. Indra Pal Singh, reported in 1998 (6) SCC 358 = AIR 1998 SC 3021, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors, reported in 2004 (2) SCC 663 = AIR 2004 SC 1330, Ramesh Chandra Sankla v. Vikram Cement and Pradeep Oil Corpn. v. MCD. reported in 2008 (14) SCC 58 = 2009 (1) SCC (L&S) 706 = AIR 2009 SC 713.

35. Thus, it is evident that the doctrine of election is based on the rule of estoppel "the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

(vi) In Joint Action Committee of Air Line Pilots' Association of India (ALPAI) v. Director General of Civil Aviation, reported in 2011 (5) SCC 435, the Hon'ble Supreme Court, at paragraph 12, held as follows:-

"12. The doctrine of election is based on the rule of estoppel "the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak,

from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily. [Vide Babu Ram v. Indra Pal Singh, reported in 1998 (6) SCC 358, P.R. Deshpande v. Maruti Balaram Haibatti, reported in 1998 (6) SCC 507, and Mumbai International Airport (P) Ltd. v. Golden Chariot Airport [2010 (10) SCC 422 = 2010 (4) SCC (Civ) 195]."

5. A Letter Patent Appeal is maintained, only if any directions are issued in the contempt petition, affecting the interest of the parties. Few decisions on this aspect is worth consideration,

(i) In V.M.Manohar Prasad v. N.Ratnam Raju reported in 2004 (13) SCC 610, the Hon'ble Supreme Court was considering a case, wherein an appeal was filed against further directions given by a learned Judge exercising contempt jurisdiction and the Hon'ble Division Bench of the High Court held that such an appeal was not maintainable. In this situation, the Hon'ble Supreme Court held that the appeal is maintainable, as an appeal would lie to the Court, normally exercising appellate jurisdiction against directions given by a Court without jurisdiction.

(ii) In Midnapore Peoples' Cooperative Bank Ltd. v. Chunilal Nanda reported in 2006 (5) SCC 399, the following two questions were formulated for consideration:

(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under Section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under Clause 15 of the Letters Patent?"

So far as question No.(i) is concerned, the Hon'ble Supreme Court was answered in para 11 as under:

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under Section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases). The first point is answered accordingly."

With regard to question No. (ii) relating to maintainability of an intra-court appeal under Letters Patent against an interlocutory order, the Hon'ble Supreme Court, at Paragraphs 15 and 16, held as follows:

"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to

facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2 (9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matter in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) and (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent."

6. On the facts and circumstances of the case on hand, we find that no fresh directions have been issued in the Contempt Petition. Hence, we hold that this Letter Patent Appeal, challenging the orders passed in the Contempt Petition, is not maintainable.

7. In the light of the decisions considered and though there are several grounds raised, we find no force in the submissions of the Petitioner/Party-in-Person. Accordingly, this Letter Patent Appeal is dismissed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

skm

To

1.The Assistant Commissioner,
Zone x11, Corporation of Chennai,
Alandur, Chennai-16.

2.The Assistant Revenue Officer,
Zone 12, Corporation of Chennai,
Alandur, Chennai-16.

+1cc to M/s.R.Varalakshmi , Advocate SR.No. 4188

+1cc to Mr.A.J.Yuvaraj , Advocate SR.No. 4836

+2ccs to Mr.Ashok Kumar , Advocate SR.No. 5224

L.P.A.No.1 of 2018

A.SK(25/06/2019)

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