



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.A. [MD].No.465 of 2020 against W.A. [MD].No.6310 of 2020

and

C.M.P. (MD)No.3317 of 2020

M.Kumar,
The Panchayat President,
Virachilai Village Panchayat,
Thirumayam Taluk,
Pudukkottai District.

: Appellant/3rd Respondent

Vs.

1.PL.Jeyam

: 1st Respondent/Petitioner
/Petitioner

2.The District Collector,
Pudukkottai District,
Pudukkottai.

3.The Block Development Officer,
(Village Panchayats),
Thirumayam Panchayat Union,
Thirumayam Village,
Thirumayam Taluk,
Pudukkottai District.

: Respondents 2 & 3/
Respondents 1 & 2/
Respondents 1 & 2

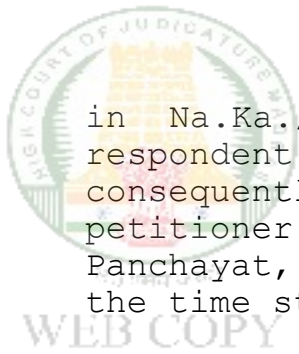
PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent as against the order of a Writ Court dated 28.05.2020 made in W.M.P. (MD)No.5536 of 2020 in W.P.(MD)No.6310 of 2020.

Prayer in WMP(MD).No.5536 of 2020:

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India, praying this Court to pass an order of interim stay of operation of the impugned order of transfer in Na.Ka./1595/2018/Thi3 dated 08.05.2020 on the file of the respondent NO.2 issued on 19.05.2020 pending disposal of the Writ Petition.

Prayer in WP(MD).No.6310 of 2020:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of transfer



in Na.Ka./1595/2018/Thi3 dated 08.05.2020 on the file of the respondent NO.2 issued on 19.05.2020 and quash the same as illegal consequently directing the respondents No.1 and 2 to permit the petitioner to continue as Panchaya Secretary at Virachilai Village Panchayat, Thirumayam Taluk, Pudukkottai District - 622412 within the time stipulated by this Hon'ble Court.

For Appellant : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader
for R.1 & R.2

J U D G M E N T

[Judgment of the Court was delivered by **P.N.PRAKASH, J.**]

By order dated 08.05.2020, the Block Development Officer (Village Panchayats), Thirumayam Panchayat Union, transferred PL.Jeyam - petitioner in W.P(MD)No.6310 of 2020 from Virachilai to Aathoor and in his place, transferred one C.Murugan from Aathoor to Virachilai.

2. Challenging the order dated 08.05.2020, PL.Jeyam filed W.P (MD)No.6310 of 2020, in which, C.Murugan was not impleaded as respondent, but M.Kumar - Panchayat President, Virachilai Village Panchayat was impleaded as third respondent.

3. On 28.05.2020, the learned Single Judge in W.M.P(MD)No.5536 of 2020 in W.P(MD)No.6310 of 2020 granted interim stay of the order dated 08.05.2020. Challenging the interim order dated 28.05.2020, M.Kumar has filed the present writ appeal.

4. The main grievance of M.Kumar is that in the writ petition, C.Murugan was not impleaded as respondent and that C.Murugan has joined on 09.05.2020. Suppressing this fact, PL.Jeyam had filed the aforesaid writ petition and interim orders have been passed thereon.

5. Though M.Kumar appears to have a strong case, we are not inclined to entertain this writ appeal challenging the *exparte* interim order granted by the learned Singled Judge in view of the following judgments:

(i) In **Midnapore Peoples' Co-op.Bank Ltd. & Ors. vs. Chunilal Nanda & Ors**, in Appeal (civil) 1727 of 2002, dated 25.05.2006, the Honourable Supreme Court has considered the scope of Clause 15 of the Letters Patent and in Paragraph No.16, it is held as follows:

"16. 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.

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 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters 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) to (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 purpose of filing appeals provided under the Letters Patent."

(ii) In *Southern Academy of Maritime Studies, Rep. by Director vs. A.M.Akash and others* [W.A.No.1819 of 2019, decided on 14.06.2019], the Division Bench of this Court had an occasion to deal with the scope of maintainability of a Writ Appeal against an interim order and the relevant paragraphs are extracted hereunder:

"11. The issue as to whether a writ appeal under clause 15 of the Letters Patent is maintainable as against an interim order granted in a writ petition, is no longer *res integra*. The same has been dealt with by Hon'ble Division Bench of this Court and held that when an interim order is passed, an application under Article 226(3) of the Constitution of India, can be filed for vacating the said order and that appeal directly against such interim order should not be entertained. Reference can be made to the following decisions.



(i) In, The Anna University v. Narayanaguru International Institute of Science and Technology (Regd. Trust) and others in W.A.(MD) No.466 of 2015 dated 14.05.2015, after considering the earlier decisions of this Court, a Hon'ble Bench, held that a writ appeal as against an interim order, which has not attained finality, granted in writ petition, is not maintainable.

(ii) A similar question came for consideration before a Hon'ble Division Bench of this court in R.Kannan v. Indcom Electronics Ltd., stating that the order impugned therein is not a judgment within the meaning of Clause 15 of Letters Patent of this court, a Hon'ble Division Bench, elaborately considered the matter, and held that the interim order made in the petition, which has not reached finality, determining the rights and liabilities between the parties cannot be said to have caused grave and substantial injustice to the appellant and will not fall within the meaning of the word 'judgment' occurring in Clause 15 of the Letters Patent. Accordingly, the Hon'ble Division Bench held that writ appeal was not maintainable against an interim order.

(iii) In Dr.Chinnaraj Joseph Jeyakumar Joseph Jeyakumar v. The Governing Counsel of American College and Others in W.A.No.540 of 2008, dated 02.08.2008, another Hon'ble Division Bench of this court held that ex- parte interim orders are not judgments for an aggrieved person to invoke the jurisdiction of the Appellate Court, under clause 15 of the Letters Patent. Adopting the same legal principle, W.A. No.2347 of 2012, dated 05.12.2012, was disposed of by the Hon'ble First Bench giving liberty to the appellant therein to file application to vacate the interim order.

(iv) In Hindu Nadar Educational Trust, represented by its Managing Trustee and others vs. Hindu Nadar Uravinmurai, Nilakottai, in W.A.(MD) No.312 of 2016 dated 22.02.2016, a Hon'ble Division Bench of which one of us, is a party (Justice S.Manikumar), held as follows:

"In the abovesaid circumstances, we would only clarify that the interim order, granted in W.M.P (MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016 dated 05.01.2016, would be an interim order, till the miscellaneous petitions are finally heard and decided, along with the vacate stay petition. It shall not be an interim order, as prayed for, in the miscellaneous



petitions, till the disposal of the writ petition. It could only be an interim order, till the parties to the lis, are put on notice, in the interim applications and heard. With the above clarification, we only request the Writ Court, to take up the injunction petitions in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016, along with the vacate stay petition, and pass orders, as expeditiously as possible. Registry is directed to place the matter before the learned single Judge. Accordingly, the writ appeal is disposed of. No costs. Consequently, C.M.P (MD)No.1856 of 2016 is closed."

(v). In Special Tahsildar No.III, Land Acquisition, Lignite Project, Neyveli, vs. V.Rangasamy Reddiar, reported in AIR 1988 Madras 162, this Court, has held as follows:-

'2.We are very much concerned to note a disturbing tendency that is fast developing now-a-days. In the recent past, we have come across several matters in which appeals are filed against ad interim exparte orders without resorting to the normal course of approaching the court which passed such orders and seeking appropriate further orders in spite of the law having been clearly laid down by a Division Bench of this Court in Abdul Shukoor v. Umachander AIR 1976 Mad 350. No doubt, that case arose out of an order emanating from a Subordinate Court. The ratio of the decision will apply with more force to an order passed by a learned single Judge of this Court. Moreover the ad interim orders are not judgments within the meaning of clause 15 of the Letters Patent.

3.What concerns us most is that the Government and statutory Corporations very often indulge in by-passing the only lawful course and adopting a course expressly disapproved by this court. We hold that the appeals ought not to have been filed in this case. The only course open to the Government was to approach the court in charge of civil miscellaneous petitions and pray for the passing of appropriate final orders in the civil miscellaneous petition. We hope that there will be no recurrence of similar instances in future. We make it clear that if we come across any such appeals in future, we will be constrained not only to dismiss such appeals, but also penalise the parties concerned with orders of heavy costs.' The above said decision has been followed in Syed Zehera Jabeen vs. S.Padmanabhan, reported in 1988 II MLJ 423 = 1989 (1) L.W 112, and Telecom Regulatory Authority of India vs.



Bharti Airtel Ltd., reported in 2013 (5) CTC 264."

6. Therefore, it is open to the aggrieved to approach the learned Single Judge for vacating the interim order. However, Mr.M.Ajmal Khan, learned Senior Counsel expressed grievance that the Registry is not entertaining the vacate stay applications in view of the present COVID-19 regime wherein only urgent matters are being entertained.

7. In our opinion, this is a fit case, in which, a vacate stay application can be maintained as the situation is urgent and since it is alleged that C.Murugan had already joined the post on 09.05.2020 and that the said C.Murugan has not been impleaded as respondent in the writ petition. Therefore, we give liberty to both M.Kumar and C.Murugan to approach the learned Single Judge for having the interim order vacated and any application filed by them shall be entertained by the Registry.

8. With the above observations, this Writ Appeal stands disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rsb

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Pudukkottai District,Pudukkottai.

2.The Block Development Officer,
(Village Panchayats),
Thirumayam Panchayat Union,Thirumayam Village,
Thirumayam Taluk,Pudukkottai District.

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and
C.M.P. (MD)No.3317 of 2020
Dated: 19.06.2020

AP (30/06/2020) 6P 3C

<https://hcservices.ecourts.gov.in/hcservices/>