



WEB COPY

W.A.[MD].No.464 of 2020

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.464 of 2020

and

C.M.P. (MD)No.3316 of 2020

P.Mahalingam

: Appellant/5th Respondent/
1st Respondent/Petitioner

Vs.

1.Vanitha

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The Block Development Officer,
Kariyapatti Taluk,
Virudhunagar District.

4.The Block Development Assistant Director (Audit),
Virudhunagar,
Virudhunagar District.

5.The Panchayat President,
Melakallangulam Panchayat,
Mustakuruchi Post,
Kariyapatti Taluk,
Virudhunagar District.

: Respondents 2 to 5/
Respondents 1 to 4

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent as against the order of a Writ Court dated 26.05.2020 made in W.M.P. (MD)No.5525 of 2020 in W.P.(MD)No.6303 of 2020.

Prayer in WMP(MD). 5525 of 2020 :

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India to grant an order of Interim stay staying the operation of the impugned order of the 2nd respondent in Na.K.P.1/152/2020 dated 13.4.2020 pending disposal of the above WP and thus render justice.

Prayer in WP(MD). 6303 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of
<https://hcservices.ecourts.gov.in/hcservices/>



Cetriorary or any other order or direction in the nature of Writ calling for the records pertaining to the impugned order of the 2nd respondent in Na.K.P1/152/2020 dated 13.4.2020 and quash the same as illegal.

For Appellant : Mr.M.Saravanakumar
For Respondents 2to5 : Mr.VR.Shanmuganathan,
Special Government Pleader

J U D G M E N T

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

It is the grievance of the appellant that the interim stay granted by this Court in W.P.(MD)No.6303 of 2020 and W.M.P.(MD) No.5525 of 2020, dated 26.05.2020 is causing undue prejudice to him and that the vacate stay application filed by the appellant is not getting listed and hence, he has come by way of a Writ Appeal challenging the interim order dated 26.05.2020.

2. We have heard the learned counsel for the appellant and the learned Special Government Pleader for the respondents 2 to 5.

3. It is the specific stand of the appellant that the writ petitioner has been relieved as early as on 17.04.2020 and the appellant assumed charge on 21.04.2020 itself, which has been suppressed in the Writ Petition and the interim order has been obtained. In view of the interim order, the appellant is not in a position to work in the place where he got transferred.

4. The Hon'ble Supreme Court in **Midnapore Peoples' Co-op.Bank Ltd. & Ors. vs. Chunilal Nanda & Ors**, in Appeal (civil) 1727 of 2002, dated 25.05.2006, 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."

5. A Division Bench of this Court had an occasion to deal with the scope of maintainability of a Writ Appeal against an interim order in W.A.No.1819 of 2019, dated 14.06.2019 [Southern Academy of Maritime Studies, Rep. by Director vs. A.M.Akash and others]. 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 bypassing 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. Bearing in mind the above cited judgments, we are also of the view that a Writ Appeal challenging the exparte interim order granted by the learned Singled Judge is not maintainable. However, taking into consideration the urgency, we request the learned Single Judge in-charge of the roster to take up the vacate stay application and dispose it of expeditiously, preferably on 26.06.2020.



7. Registry is directed to post **W.P.(MD)No.6303 of 2020** along with the vacate stay application before the roster Judge.

8. *Status quo* shall be maintained till the disposal of the vacate stay application.

9. With the above directions, the Writ Appeal stands disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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.

(ii) Issue order copy expeditiously.

To

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Block Development Officer,
Kariyapatti Taluk,
Virudhunagar District.
- 3.The Block Development Assistant Director (Audit),
Virudhunagar,
Virudhunagar District.
- 4.The Panchayat President,
Melakallangulam Panchayat,
Mustakuruchi Post,
Kariyapatti Taluk,
Virudhunagar District.
- 5.The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.

Judgment made in
W.A. [MD].No.464 of 2020
Dated: **19.06.2020**