

02 22.06.2023
RP Ct. No. 01
AN

MAT 983 of 2023
With
IA No. CAN 1 of 2023

Sri Ambika Prasad Panda & Ors.
Vs.
Sri Manik Chandra Maji & ors.

Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Pratik Dhar, Sr. Adv.
Mr. Shiv Shankar Banerjee
Ms. Anupa Banerjee
Ms. Sanchita Barman Roy
... For the appellants

Mr. Sidhartha Banerjee
Mr. Shranya Chatterjee
Mr. Nepesh Majhi
... For the respondents

1. This intra-Court appeal is directed against the order dated May 12, 2023 passed by the learned Single Bench in CPAN 431 of 2023 in WPA 22028 of 2013. By the impugned order the learned Judge had issued various directions and also directed personal appearance of the alleged contemnors on June 23, 2023. The correctness of the order and direction has been challenged by the respondents in CPAN 431 of 2023 as alleged contemnors.

2. Learned advocate appearing for the respondents/writ petitioners/contempt applicants has raised a preliminary objection with regard to maintainability of this intra-Court appeal. In support of his contention he placed reliance on the decision of the Hon'ble Supreme Court in **Midnapore Peoples' Co-op. Bank Ltd. & ors. vs. Chinilal nanda & Ors. reported in 2006 (4) Supreme 752.** Thus, the Court first requires to consider as to whether this

intra-Court appeal is maintainable or not.

3. The Hon'ble Supreme Court in **Midnapore Peoples' Co-op. Bank Ltd. & ors. (supra)** after taking note of the various decisions rendered by the Hon'ble Supreme Court summarizes the position with regard to appeals against the orders and contempt proceedings in the following manner:

"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 appeal to under Article 136 of the Constitution of India, (in other cases).”

4. With regard to facts of the case on hand, subparagraph 5 of paragraph 11 would be relevant. The Hon'ble Supreme Court held that if the High Court, for whatsoever reasons, 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 and such an order is open to challenged in an intra-Court appeal (if the order was of a learned Single Bench and there is a provision for intra-Court appeal). Clause 15 of the Letters Patent provides for an appeal from a judgment of single Bench. Thus, what we require to see as to whether any order or direction has been issued by the learned Single Judge in the order impugned.

5. On perusal of the impugned order, more particularly, in pages 8 and 9, we find there has been certain positive findings recorded by the learned Single Bench apart from certain positive directions. The learned Single Bench held that there is no time limit for the purpose of entering into a package deal at all; it is a policy decision which seeks to regulate the affairs of an Article 12 Authority

with persons whose land such Article 12 Authority utilized and then purchased. The appellant/ECL is the author of the Scheme of 2001, the view favouring the other parties are required to be applied; it is sought to be contended that two other co-sharers of the immovable property of the petitioner no.3 (respondent no.3 herein) objected to the petitioner no.3 entering into a package deal; there may or may not be inter se disputes between the co-sharers of the immovable property; as on date there is no order from any competent Court of Law preventing ECL from considering any of the petitioners selling their land as a land loser; the impugned decision of ECL dated January 31, 2023 cannot stand; it cannot stand on various other reasons also. One of them is the decision of the Adjudicating Authority that the sale deeds in question were inappropriately executed by the ECL officials; the authorities were directed to treat each of the petitioners as land losers as they qualified under the Scheme of 2001 and to take appropriate steps thereunder within seven days from date.

6. To our mind, all the above observations are, in fact, positive findings coupled with directions relating to the merits of the disputes between the parties, which were considered and decided by the appellant by passing a speaking order dated January 31, 2023. Thus, it cannot be disputed that the Court has decided on several issues and has issued directions relating to the merits of the disputes in the contempt proceedings. The aggrieved persons/appellant cannot be left remediless and an intra-

Court appeal is maintainable. Accordingly, the preliminary objection raised by the learned counsel for the respondents is rejected and the appeal is said to be maintainable.

7. Learned Senior counsel appearing for the appellants places reliance on the decision of the Hon'ble Supreme Court in the case of **J.S. Parihar vs. Ganpat Duggar & Ors. reported in (1996) 6 SCC 291** wherein the Hon'ble Supreme Court held that when an order has been passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum and that cannot be considered to be a willful violation of the order. Reliance was also placed on the decision in the case of **Lalith Mathur vs. L. Maheswara Rao reported in (2000) 10 SCC 285 wherein** the Hon'ble Supreme Court after taking note of the facts of the case and the directions issued in the writ petition, whereby the representation of the respondent therein was directed to be considered by the State Government and noting that the direction was carried out by the State Government which considered and rejected the representation on merits. The Hon'ble Supreme Court held that instead of challenging the order in a fresh representation under Article 226 of the Constitution of India the respondent therein cannot take recourse to contempt proceedings, which does not lie as the order has been complied with by the State Government, which had considered the representation and rejected the same on merits. The decision of the Hon'ble Supreme Court in the

case of **Special Deputy Collector (LA) vs. N. Vasudeva Rao & Ors. reported in (2008) 14 SCC 165** was also referred. The Hon'ble Supreme Court in the said decision referred to an earlier decision in the case of **Union of India vs. Subedar Devassy reported in (2006) 1 SCC 613** wherein the Hon'ble Supreme Court held that it would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take a view different from what was taken in the earlier decision. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the parties, who alleged to have committed default in complying with the directions and/or judgment or order. Further the Hon'ble Supreme Court after taking note of the fact in the case of **Prithawi Nath Ram vs. State of Jharkhand reported in (2004) 7 SCC 261** wherein the Hon'ble Supreme Court held that when there was a dispute about the area in the contempt proceedings, no direction could have been issued as was done in the said matter.

8. All the three decisions relied on by the learned senior counsel for the appellants to contend that the contempt petition was not maintainable. The learned counsel on either side have made elaborate submission before us and have referred to various documents annexed in the stay petition, more particularly, the orders issued in WP 22028(W) of 2013 dated July 26, 2018 as affirmed by the Hon'ble Division Bench by its judgment dated December 5, 2022 in MAT 786 of 2021. On perusal of the order and

direction issued in the writ petition as affirmed by the Hon'ble Division Bench, we find that the direction was to treat the respondents/applicants as land losers under the subsisting policy of ECL. The appellant/ECL will consider the respondents as land losers and treat them accordingly in a selection process undertaken by them. The Hon'ble Division Bench while affirming the direction issued by the learned writ Court held that the applicable policy of 2001 will also apply to the facts of the case and that the Hon'ble Single Bench did not commit any error in extending the land-loser policy to the writ petitioners. Thus, it goes without saying that the appellant is entitled to examine the case of the respondents by treating them as land-losers and to consider as to whether the benefit of the Scheme of 2001 could be extended to the respondents. Thus, the directions, which was issued by the learned Single Bench and affirmed by the Hon'ble Division Bench was complied with by the appellant and this culminated in the order dated January 31, 2023. It is an admitted fact that the respondents did not independently challenge the said order of January 31, 2023 but chose to resort to filing of a contempt application. We find the order to be a reasoned order and several issues have been pointed out and ultimately held that the benefit of the Scheme of 2001 cannot be extended to the respondents, for the reasons which have been assigned, more particularly, in page 4 of the order dated January 31, 2023. One of the reasons set out in the said order that the proposal to purchase the parcel of land including the land

of the respondents was approved with condition that no employment will be offered against such purchase of land. That total ten persons sold their land to ECL in furtherance of instant proposal and all of them are satisfied with consideration paid to them in lieu of land, except the petitioners who are aware of the fact. In paragraph (h) in page 5 of the order it has been stated that the sale deed in question were inappropriately executed by ECL official, as the land purchased indeed was inherited land of ECL, so appropriate corrective action will be taken. The question would be as to whether such finding would be proper and justified and in accordance with law.

9. In the light of the above, orders passed in the earlier writ petition affirmed by the Hon'ble Division Bench. However, this issue touches upon the merits of the matter apart from the other reasons, which have been stated in paragraphs 4 and 5 of the order dated January 31, 2023 which obviously cannot be gone into in a contempt proceedings, more particularly, in the manner which has been dealt with by the learned Single Bench. It is settled legal position that the arms of the Court exercising powers under the Contempt of Courts Act, 1971 are long enough to even to give a curative relief but nevertheless if the contempt Court is of the prima facie opinion that such relief should be granted then the contemner is entitled to be put on notice on such prima facie view. However, in the impugned order, we find that no such question/issue was framed nor any affidavits were called for to test the

correctness of the reasons assigned in paragraph (a) to (j) as contained in pages 4 and 5 of the order dated January 31, 2023.

10. Thus, we are of the view that the appropriate steps should have been taken by the respondents to independently challenge the order dated January 31, 2023 and not by way of contempt proceedings as done by the respondents.

11. In the light of the above, we are of the clear view that the order and direction issued by the learned Single Judge calls for interference. Accordingly, the appeal stands **allowed** and the order dated 12.5.2023 stands aside. The respondents are granted liberty to challenge the order dated January 31, 2023 passed by the General Manager, ECL before the appropriate forum. In the event such challenge is made, the observations and findings rendered in this judgment and order will not prejudice the respondents from raising all contentions, both on facts and law. Equally, the appellants would also be entitled to defend such challenge by raising all questions on facts and law.

12. Consequently, the connected application being CAN 1 of 2023 is disposed of.

(T. S. Sivagnanam)
Chief Justice

(Ajay Kumar Gupta, J.)

