

18.10.2023
Item No.2
PG/RP
Ct. No.1

M.A.T. 2105 of 2023
With
IA No. CAN 1 of 2023

Mr. N. R. Sekar Raju, Under Secretary to the
Government of India
Vs.
Sumitra Barik & Ors.

Mr. Asok Kumar Chakraborty, Ld. A.S.G.
Mr. Sukumar Bhattacharya
.....for the Appellant
Mr. Ramdulal Manna
Ms. Manju Manna (Dey)
Mr. Sayan Mukherjee
Ms. Payel Khanra
.....for the respondent no.1/
writ petitioner

Ms. Sreemoyee Mitra....for the Punjab National Bank

1. This appeal has been filed by the Central Government challenging an order passed by the learned Single Bench dated 29th September, 2023 in CPAN 280 of 2023 in WPA 16006 of 2022. The said writ petition was filed by the respondent praying for a direction upon the Punjab National Bank to carry out the directions of the Government of India, Ministry of Home Affairs dated 11th October, 2021 and 2nd March, 2022 in relation to sanction of dependant family pension to the writ petitioner under Swatantra Sainik Samman Pension Scheme, 1980. In the said writ petition, though the Union of India was made a

party, the same was disposed of by giving a direction to the Punjab National Bank to take necessary steps in terms of the directions given to the bank by the Government of India within a time frame and there were incidental and ancillary directions.

2. The Union of India was represented. However, the Punjab National Bank, which was a respondent, though served, was not represented before the learned writ Court. Pursuant to the directions, it appears that the Punjab National Bank has forwarded the original documents submitted by the writ petitioner to the Ministry of Home Affairs on 6th June, 2022. The writ petitioner filed the contempt application alleging that not only the bank has violated the order and direction but also impleaded the Under Secretary to the Government of India, Ministry of Home Affairs as an alleged contemnor.
3. In the said contempt application, by the impugned order, the learned Single Bench after assigning several reasons, has issued rule to the alleged contemnor no.4, who is the appellant before this Court. Aggrieved by such order, the present appeal has been filed.
4. We have heard the learned Additional Solicitor General for the appellant, Mr. Manna, learned

advocate for the respondent/writ petitioner and Ms. Mitra, learned advocate for the Punjab National Bank. A preliminary objection is being raised by the learned advocate for the respondent/writ petitioner that the appeal is not maintainable under section 19 of the Contempt of Courts Act, 1971. In support of his contention, reliance was placed on the decision of the Hon'ble Supreme Court in **Midnapore Peoples' Co-operative Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.** reported in **2006 4 Supreme 752.**

5. The learned Additional Solicitor General placed reliance on the Division Bench judgment of this Court in **Sri Ambika Prasad Panda & Ors. v. Sri Manik Chandra Maji & Ors.** passed in **M.A.T. 983 of 2023 dated 22nd June, 2023.**
6. Under normal circumstances, the Court could have agreed with the submissions made by the learned advocate for the respondent/writ petitioner with regard to the maintainability of the present appeal. However, on the facts and circumstances of the case, it precludes this Court from doing so. This is more so because in the impugned order, the learned Single Bench has noted that the direction has been issued in the writ petition to the bank and if that is so, the Court was conscious of the fact that there was no

direction against the Government of India/Ministry of Home Affairs.

7. The Court then proceeded to take note of the submissions made by the Union of India and has come to a conclusion that the Union of India has been changing their stand on each and every occasion and insisting upon some fresh set of documents etc.
8. The Court also came to the conclusion that the appellant/alleged contemnor no. 4 is acting most unreasonably in circumventing the orders passed in the writ petition and after assigning several other reasons, rule has been issued.
9. Firstly, it is to be noted that the contempt petition arises out of an order passed in W.P.A. 16006 of 2022. Admittedly, in the said writ petition, there was no direction issued to the Union of India, Ministry of Home Affairs. In such circumstances, the contempt petition could not have been entertained against the appellant/Union of India alleging that they have violated the directions issued, when admittedly there was no direction against them.
10. In the decision in *Ambika Prasad Panda (supra)* dated 22nd June, 2023, an identical objection was raised by referring to the decision in the case of *Midnapore Peoples' Co-operative Bank Ltd. & Ors.*

(*supra*). The Court, after taking into consideration the submissions, took note of the various other decisions and held that an appeal was maintainable and if the writ petitioner is aggrieved by any action of the authority, it gives a separate cause of action to her to challenge the said order. The operative portion of the judgment reads as follows:

“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 (200&) 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.*

11. The above decision will apply with full force to the facts and circumstances of this case. Thus, we are of the view that the order and direction issued by the learned Single Bench dated 29th September, 2023 in CPAN 280 of 2023 is beyond the jurisdiction of the Court and consequently the same is set aside and CPAN 280 of 2023 stands dismissed as against the appellant.

12. Liberty is granted to the respondent/writ petitioner to challenge the order passed by the Government of India, if any, by way of a separate proceeding before the appropriate forum.
13. Accordingly, the appeal stands allowed.
14. No costs.
15. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)