

CASE NO.:
Appeal (civil) 4649-4650 of 2004

PETITIONER:
Special Deputy Collector (L.A.)

RESPONDENT:
N. Vasudeva Rao & Ors

DATE OF JUDGMENT: 28/11/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 4649-4650 OF 2004

Dr. ARIJIT PASAYAT, J.

Challenge in these appeals is to the order passed by a Division Bench of the Andhra Pradesh High Court disposing of four Letters Patent Appeals i.e. LPA Nos. 184 and 185 of 2002 and 33 and 34 of 2003, filed by the appellants.

Background facts need to be noted in brief before dealing with the rival contentions.

The land in question to an extent of 24 acres 82 cents is Government land which was said to have been assigned to the respondents herein on the basis of D Form pattas. As per the terms and conditions of the pattas, whenever the land is required for any public purpose, the same can be resumed by the Government on payment of certain ex-gratia amount.

The concerned Executive Engineer SRBC Division, Koilakuntla is said to have sent proposals for acquiring about 24 acres 82 cents that is the land in question situated in Cherlopalli village of Owk Mandal. Accordingly, the Revenue authorities surveyed the land and arrived at the actual extent of land involved to be only 20 Acres 75 cents and the said land is Government land and therefore proposal for resumption of the land was said to have been initiated.

Respondents herein filed W.P. Nos. 6511 of 1999 and W.P. No. 6513 of 1999, inter alia, contending that the appellants have resumed their land without paying ex gratia amounts in terms of GOMs. No. 1307 dated 23.12.1993.

Learned Single Judge by common judgment and order dated 11.8.1999 in Writ Petition Nos. 6511 & 6513 of 1999 disposed of the writ petitions directing the respondents herein to make a detailed representation to the authorities within four weeks and the authorities were directed to consider the same and pass appropriate order within a period of six weeks. Subsequently, respondents herein filed Contempt Case No. 493 of 2001 and Contempt Case No. 1211 of 2001 before the High Court inter alia alleging that despite court's order the ex-gratia payment was not made. The appellants filed detailed counter affidavits in the said contempt petitions inter alia indicating that the land in question was not resumed and out of the alleged land in question i.e. out of Acre 24.82 cents, soil was stated to have been excavated only in Acre 2.40 cents and as such they are not entitled to any ex-gratia

payment in respect of the entire extent.

A learned Single judge of the High Court on consideration of the matter by a common order dated 11.9.2002 in the two contempt cases held that the department has resumed the land in question, exonerated the concerned officer and directed payment of ex-gratia payment in terms of GOMs. No. 1307 dated 23.12.1993 for the entire extent of the land. Appellant filed LPA Nos. 184 and 185 of 2002 before the High Court against the order passed by learned Single Judge. The other LPA No. 33 of 2003 was filed by the Commissioner of Municipality, Tuni. The third parties filed LPA No. 34 of 2003 along with a Misc. Petition seeking permission of the Court to condone delay in filing of the LPA against the order. They also filed another Misc. petition to direct the Municipality to deliver possession of the shops as per the terms and conditions of the auction. These two appeals have been filed by the functionaries of the State Government against the combined order of the High Court in the Letters Patent Appeal.

Stand of the appellant in these appeals is as follows:

Primarily, it is contented that the learned Single Judge has no jurisdiction to give any direction in the manner done while dealing with the contempt petition. In any event, a learned Single Judge has no jurisdiction as his order merging to the order of Division Bench. Finally it is submitted that the LPA was not maintainable.

Learned counsel for the respondents on the other hand submitted that there was clear violation of the order passed in the writ petitions and there was blatant attempt to deny the legitimate claim of the respondents herein. The land was resumed on 18.11.1998 and till now nothing has been paid to the respondent as compensation. Reference has been made to several correspondences between Municipal Revenue Officer Owk Mandalam and the Special Deputy Collector, Nandyal to show that the lands of the respondents were resumed.

The law as to nature of order that can be passed in contempt proceedings had been elaborately dealt with by this Court in several cases. In Union of India & Ors. v. Subedar Devassy PV [2006(1) SCC 613] it was held as follows:

"2. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. 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. A similar view was taken in K.G. Derasari v. Union of India [(2001)10SCC 496]. The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself the power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the appellants on a

three-Judge Bench decision in Niaz Mohd. v. State of Haryana [(1994)6SCC 332], we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the appellants, the least it could have done was to assail correctness of the judgment before the higher court."

The above position was earlier highlighted in Prithawi Nath Ram v. State of Jharkhand [(2004) 7 SCC 261]. It appears that there is also dispute about the area, so in the contempt petition no direction could have been given in the manner done. The Division Bench has held that the LPA is not maintainable. In view of what has been stated in Midnapore Peoples' Coop. Bank Ltd. & Ors. v. Chunilal Nanda and Others [2006(5) SCC 399], the LPA was clearly maintainable.

In Lalith Mathur v. L. Maheswara Rao [2000(10) SCC 285] it was inter alia held as follows.

"3. The above will show that the High Court has directed the State Government to absorb the respondent against a suitable post either in a government department or in any public sector undertaking. This order, in our opinion, is wholly without jurisdiction and could not have been made in proceedings under the Contempt of Courts Act or under Article 215 of the Constitution."

Reliance was placed on two Division Bench Judgments holding that contempt petition was not maintainable before Learned Single Judge as his order had merged with the Division Bench order. As regards Lalith Mathur's case (supra), the High Court distinguished the judgment on the ground that there was no elaborate discussion in the judgment and therefore no reason is discernible. To say the least, the alleged distinguishing feature as pointed out by the High Court not to follow the judgment cannot be said to be graceful. It is clearly violative of the judicial discipline. It has been stated that payments have been made to some persons and no departure could be made in the present case. Actually there is no definite material as to whether the land was resumed or it was an excavated land.

It appears from record that three counter affidavits have been filed and one of the basic issues was whether the land was resumed or excavated land. There is no definite material in this regard brought by the respondents on record. Three counter affidavits filed by the respondents clearly indicate their definite stand. Neither learned Single Judge nor the Division Bench addressed the basic issues and on the other hand came to abrupt conclusions. Therefore, the orders passed by learned Single Judge and the Division Bench deserve to be set aside, which we direct. The authorities shall however consider the matter in detail and record findings keeping in view the GO, the factual position and evidence led before it. The appeals are accordingly disposed of without any order as to costs.