

CASE NO.:
Appeal (civil) 911 of 2008

PETITIONER:
K.M. SHIVAKUMAR

RESPONDENT:
H.V. VIJAYARAGHAVAN AND ANR

DATE OF JUDGMENT: 28/01/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 911 OF 2008
[Arising out of SLP(C) No.7565/2007]
WITH
CIVIL APPEAL NO. 912 OF 2008
[Arising out of SLP(C) No.7567/2007]

Leave granted.

These appeals by special leave arise out of a contempt proceedings filed by H.V. Vijayaraghavan, respondent No.1 herein, for alleged violation of the order of the High Court dated 18.11.2005 which is in the following terms:

"Having regard to the nature of the grievance made by the petitioners in the petition, we are of the view that they should prosecute their objections before the authorities concerned and the proceedings should be allowed to continue. We are not inclined to interfere with the preliminary notification at this stage. Consequently, the writ petition is dismissed. We, however, give liberty to the petitioners to file further objections, if any, before the competent authority within the next three weeks and if such objections are filed, the said authority shall consider the same along with the objections already filed in accordance with law and proceed in the matter thereafter. No costs."

Allegedly, pursuant to or in furtherance of the said order, number of representations and objections were filed by the said H.V. Vijayaraghavan and another person for dropping the land acquisition proceedings. On the plea that the said representations and objections had not been disposed of, a contempt petition was filed. The High Court issued notice against respondent No.8 \026 K.M. Shivakumar in the contempt petition, who is the petitioner in SLP(C) No.7565/2007. The High Court, however, opined that charges should be framed as against K.M. Shivakumar. It is stated at the Bar that during the pendency of the contempt application, however, the said purported representations and objections of H.V. Vijayaraghavan and others were disposed of on 2.2.2007 by Special Land Acquisition Officer.

This Court stayed further proceedings in the contempt matter whereafter the State purportedly decided to withdraw the land acquisition proceedings. In the said contempt proceedings before the High Court, Nandi Infrastructure Corridor Enterprises Ltd. ("the Company" for short) had filed an application for being impleaded as a party. As the said application was dismissed on 5.4.2007, a Special Leave Petition was filed before this Court which was marked as SLP(C) No. 7567/2007. Both the SLPs i.e. SLP(C) Nos. 7565/2007 & 7567/2007, were taken up together for preliminary hearing and this Court on 30.4.2007 passed the following order:

"Issue notice.

Mr. Raghavendra S. Srivatsa, learned counsel accepts notice.

Two weeks' time is granted for filing counter affidavit. Till further order, further proceedings in the contempt matter shall remain stayed."

It, however, appears that H.V. Vijayaraghavan and another person in the meantime, having regard to the order passed on their representations by the State of Karnataka, sought to withdraw the contempt application wherefor an application was filed before us. The said application was marked as I.A. No.6/2007. In the said I.A., it was directed:

"An application has been filed for withdrawal of the contempt petition pending before the High Court.

This Court has granted the stay of further proceedings. In view of the fact that the contempt petition is pending before the High Court, we are of the opinion that the interest of justice would be subserved if the interim stay granted by this Court is vacated with liberty to the applicant herein to file an appropriate application for withdrawal of the contempt petition before the High Court.

I.A. No.6 is disposed of accordingly."

However, when an application for withdrawal of the contempt petition was moved before the High Court, it was of the opinion that this Court should clarify the two orders passed by it and directed the applicant to seek clarification from this Court. Pursuant to the said observation, this application for clarification has been filed.

Mr. Raghavendra S. Srivatsa, learned counsel appearing on behalf of the respondents would submit that keeping in view the fact that the order dated 18.11.2005 stands complied, his client does not intend to proceed in the matter and therefore this Court should clarify that the High Court would be at liberty to pass appropriate order on the application for withdrawal of the contempt proceedings.

Mr. R.F. Nariman and Mr. Dushyant Dave, learned senior counsel appearing on behalf of the Company, on the other hand, would submit that the authorities of the State of Karnataka have been passing orders de-notifying the lands from the acquisition proceedings taking shelter under the contempt proceedings, which in view of the earlier judgments passed by this Court should be held to be impermissible.

It is not in dispute that the Company has filed a separate writ petition challenging the de-notification of the lands before the High Court which is still pending.

Our attention in this connection has also been drawn to an order dated 27.2.2007 passed by this Court in C.A. No.1113/2007 wherein the Company has been held to be a party in the contempt proceeding.

Keeping in view the facts and circumstances of this case, we dispose of both these appeals observing that it would be open to the High Court to dispose of the application of H.V. Vijayaraghavan for withdrawal of the contempt petition, but before doing so, the High Court would apply its mind as regards implication thereof vis-a-vis other proceedings pending before it.

As an application for withdrawal of the contempt proceedings is pending consideration before the High Court, we do not intend to make any other observation thereon but we are of the opinion that disposal of these two applications would not stand in the way of the Company to bring on record the records of High Court in pending proceedings, all the additional facts which are purported to have arisen after the filing of this contempt petition.

Any order passed by the State Government purportedly to have been passed acting in terms of the order of the High Court shall be open to challenge by the Company or any other person having an interest in the matter.

To the aforementioned effect, it will be open to the Company to bring the same to the notice of the High Court even in the contempt proceedings. We are sure that the High Court shall take all the aspects of the matter into consideration before passing appropriate order.

In the event the High Court does not permit H.V. Vijayaraghavan, respondent No.1 herein, to withdraw the contempt petition, it goes without saying that he would be at

liberty to raise all contentions in the contempt proceedings. Liberty to mention is granted in the event any occasion arises therefor.

For the views we have taken, it is not necessary to keep these matters pending before this Court. Both these appeals are disposed of with the aforementioned directions and observations. No costs.

JUDIS