

IN THE SUPREME COURT OF INDIA

CIVIL APPELATE JURISDICTION

CIVIL APPEAL Nos. 7601-7602 OF 2012
(Arising out of SLP © No. 26640-26641 of 2011)

Young Men Christian Association ... Appellant

Versus

**Holy Mother of Aurobindo Ashram
& Ors.**

... Respondents

ORDER

RANJAN GOGOI, J

Leave granted.

2. The order dated 23.9.2009 passed by the High Court of Guwahati in a Letters Patent Appeal No. (Writ Appeal No. 18/ (SH)/2005) as well as the order dated 16.6.2011 declining the review application filed by the appellant is the subject matter of challenge in the present appeal.

3. In view of the limited notice issued by this Court on 16.9.2011, at the very outset, we had heard learned counsel for the parties as to whether the matter should be remanded to the High Court for reconsideration of the LPA, making it clear that in the event such a course of action is considered to be not feasible or appropriate, the contentions of the parties on the merits of the dispute would be considered by us. To resolve the aforesaid question a brief recital of the core facts will be required.

4. The respondent No.1 in the present appeal i.e. the Holy Mother of Aurobindo Ashram had filed a writ petition before the High Court challenging an order dated 8.11.1976 allotting two plots of lands measuring 0.69 acres i.e. 30,290 sq. yards and 0.67 acres, i.e. 29,290 sq.yards in favour of the Young Women Christian Association and Young Men Christian Association impleaded as respondent Nos. 5 and 6 in the writ petition. The case of the respondent – writ petitioner before the High Court was to the effect that two plots of land numbered as plot 5 and 5A included within an

estate known as 'Morven Estate' was gifted to the respondent No. 1 way back in the year 1955. The land in question was covered by a lease agreement made in favour of the original owner - Shri HL Hadow for a period of 99 years, w.e.f. 1.9.1865. On expiry of the period of lease, i.e. 99 years, the Government of Meghalaya, though by order dated 2.1.1976, had conveyed its decision to renew the lease for another period of 75 years in favour of the respondent No.1 – writ petitioner formal orders in this regard were not forthcoming. At the same time by order dated 8.11.1976 part of the property was allotted to the respondents in question. Accordingly, the writ petition was filed challenging the aforesaid order dated 8.11.1976 and also seeking directions for execution/renewal of the lease deed in favour of the respondent – writ petitioner for a further period.

5. By order dated 3.10.2000 a learned Single Judge of the High Court allowed the writ petition; the orders impugned were set aside and the State of Meghalaya was directed to

issue formal orders for execution/renewal of the lease deed in favour of the respondent No. 1 – writ petitioner.

In paragraph 23 of the order of learned Single Judge it was however observed as:

“23. Before parting with the record, it is made clear that the possession of the private respondents over a portion of the land shall not be disturbed in view of the specific averment made in the writ petition.”

6. In view of the use of the expression “private respondents” in para 23 of the order of the learned Single Judge dated 3.10.2000, the appellant – YMCA, it is contended, had no cause to be aggrieved by the said order. However, notwithstanding the directions contained in para 23 noted above, as interference with the possession of the land by the appellant was made Review Petition No. 4 (SH) of 2002 was filed before the High Court seeking suitable clarification of the observations contained in para 23 of the order dated 3.10.2000. By order dated 6.1.2004 the learned Single Judge clarified that the word “private respondents”

mentioned in para 23 meant the respondent – YWCA and no other party.

7. The position having been so clarified by the order dated 6.1.2004 in Review Petition No. 4 (SH) of 2002, Writ Appeal No.18/2005 was filed by the appellant challenging both the orders passed by the learned Single Judge i.e. order dated 3.10.2000 in the main writ petition and the order dated 6.1.2004 passed in Review Petition No. 4 (SH) of 2002. Along with the appeal an application for condonation of delay of three years and 135 days that had occurred in respect of the main order dated 3.10.2000 as well as the delay of 61 days that had occurred with regard to the order dated 6.1.2004 passed in the review petition was prayed for. In the application for condonation of delay it was stated by the appellant that it was not aggrieved by the order dated 3.10.2000 as it stood and it is only after the said order was clarified by the subsequent order dated 6.1.2004 that the cause of action to file the appeal had arisen.

8. Shri Hansaria, learned senior counsel appearing for the appellant, has submitted that a reading of the order dated 23.9.2009 passed in Writ Appeal No. 18/2005 would go to show that the Division Bench of the High Court had no occasion to consider the claim of the appellant to the land in question on merits. In fact a reading of the said order shows that the appeal i.e. Writ Appeal No.18/2005 was construed to be against the order dated 6.1.2004 passed in the Review Petition and the same was disposed of in the above terms. Learned counsel has submitted that Writ Appeal No. 18/2005 being against the main order dated 3.10.2000 as well as the order dated 6.1.2004 passed in the Review Petition, in the fitness of things, the entire matter ought to be remanded to the High Court for due consideration on merits.

9. On the other hand, Shri Sorabjee, learned senior counsel appearing for respondent No. 1 has drawn our attention to the application for condonation of the delay that has occurred in instituting the LPA as well as the order dated 3.8.2004 condoning the delay. Shri Sorabjee has submitted

that the aforesaid application and order clearly demonstrate that the appellant had given up its challenge to the main order dated 3.10.2000 passed by the learned Single Judge in the Writ Petition and had confined its challenge to the order dated 6.1.2004 by clearly admitting before the Division Bench that it is aggrieved only by the order dated 6.1.2004 passed in the Review Petition. It is submitted that in view of the aforesaid clear and categorical stand taken by the appellant there will be no occasion for this Court to remand the matter to the High Court for a fresh consideration.

10. We have considered the submissions of the parties and have looked into the relevant record referred to in the course of the arguments advanced.

11. A reading of the memo of appeal filed by the appellant before the High Court clearly shows that what was challenged in the appeal is the main order dated 3.10.2000 passed in the Writ Petition as well as the order dated 6.1.2004 passed in the Review Petition. What was stated

before the Division Bench of the High Court is that the appellant had no grievance against the main order dated 3.10.2000 as it originally stood and the grievance arose only after para 23 of the order dated 3.10.2000 was explained in the subsequent order dated 6.1.2004 passed in the Review Petition. If the above was the stand taken by the appellant, it was naturally incumbent on the part of the appellate bench to consider the appeal against the main order dated 3.10.2000 passed in the writ petition as well as the order dated 6.1.2004 passed in the Review Petition. A scrutiny of the order dated 23.9.2009 passed by the High Court in the writ appeal clearly indicates that apart from incidental references to the claim of the appellant to the land in question, the High Court has proceeded as if the writ appeal was directed against the order dated 6.1.2004 passed in the Review Petition. The said fact being ex facie apparent and the same not having been corrected despite the application for review filed by the appellant (Review Petition No.11/2009), we are of the view that these appeals have to

be allowed; the order dated 23.9.2009 should be set aside and the matter remanded to the High Court for a fresh consideration.

12. We order accordingly and request the High Court to restore the writ appeal to its original number and dispose of the same as expeditiously as possible, preferably, within a period of two months from the date of receipt of this order. Naturally, all such questions that may open in law to the parties may be urged before the High Court.

.....J.
[P. SATHASIVAM]

.....J.
[RANJAN GOGOI]

New Delhi,
October 19, 2012.

SUPREME COURT OF INDIA



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT