

The Divisional Forest Officer Vs The Principal Subordinate Judge and Others

Court: Andhra Pradesh High Court

Date of Decision: Sept. 22, 1995

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 39 Rule 3, Order 39 Rule 3A, 115, 99
Constitution of India, 1950 â€” Article 227

Citation: (1995) 3 ALT 324 : (1995) 2 APLJ 439

Hon'ble Judges: C.V.N. Sastry, J

Bench: Single Bench

Advocate: Government Pleader, for the Appellant; E. Manohar and P. Kamalakar for 2nd Respondent, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.V.N. Sastry, J.

this revision under Article 227 of the Constitution the order dt. 19-5-1989 passed by the lower Court granting an

interim injunction and the subsequent delay and inaction on the part of the lower Court in not disposing of the petition for temporary injunction on

merits are assailed. The facts leading to this revision petition may be stated briefly:

The second respondent herein was granted a quarry lease for road metal and building stone in the year 1979 for a period of five years which

expired in the year 1994. Before the expiry of the lease period, the second respondent is stated to have applied for renewal of the lease. As the

concerned authorities did not pass orders thereon, the second respondent filed a writ petition W.P. No. 14310 of 1984 in this Court for directing

the authorities to renew the lease in his favour. In the said writ petition he obtained interim orders in W.P.M.P. No. 18847 of 1984 permitting him

to carry on the quarrying operations pending disposal of the writ petition. The said writ petition was finally disposed of on 15-7-1988 with certain

directions according to which the second respondent was required to make a representation to the Government and the Forest Department

officials were required to make a personal inspection and submit a report to the Government who will thereupon pass appropriate orders on the

renewal application filed by the second respondent after referring the matter to the Central Government also as required under the rules. Pursuant

to the said directions of this Court, it appears that the quarry was inspected by the forest officials concerned in March and April, 1989 and

necessary proposals were submitted to the Chief Conservator of Forests for consideration. As no final orders were passed by the concerned and

in the mean time attempts were made to prevent the second respondent from operating the quarry, the second respondent filed O.S. No. 5 of

1989 before the Vacation Civil Judge, Chittoor, for a declaration that he is entitled for the lease-hold rights in respect of the said quarry and for a

permanent injunction restraining the defendants from interfering with his right to operate the said quarry. Along with the said suit, the second

respondent filed LA. No. 18 of 1989 for a temporary injunction restraining the defendants and their staff from in any way obstructing the quarry

operations and transport of the metal stones by the petitioner from the quarry pending disposal of the suit. The said application initially came up for

orders before the Vacation Civil Judge on 4-5-1989. On that day the Vacation Civil Judge ordered urgent notice to be issued to the respondents

and posted the petition to 10-5-1989 for counter and disposal. As notices were not issued for want of service postage stamps, on 10-5-1989, the

Vacation Civil Judge ordered issue of fresh notices to respondents urgently through Court and by R.P. and posted the LA. to 19-5-1989.

Meanwhile status quo was ordered to be maintained. On 19-5-1989 it appears that the Assistant Government Pleader filed memo of appearance

for R.3 i.e., the Divisional Forest Officer, East Division, Chittoor who also appeared in person in Court on that day. Notices of R.1 and R.2 i.e.,

Assistant Director of Mines & Geology and the Deputy Director of Mines & Geology, Cuddapah, were not returned. The Vacation Civil Judge

thereupon passed the following order on 19-5-1989:

Heard the petitioner's advocate. Issue interim injunction.

F.N. to R.1 and R.2 and counter, if any, of R.3 by 13-6-89.

2. It appears that a counter-affidavit was immediately filed by the third respondent therein (petition herein) opposing the grant of temporary

injunction and requesting to vacate the interim injunction. But so far the petition for injunction has not been taken up for hearing or disposed of on

merits by the Principal Sub-Judge, Tirupati where the suit and the said I. A. are now pending. The petitioner complains that the lower Court has

been unnecessarily adjourning the petition from time to time for the past six years without any justification and that under the guise of the interim

injunction the second respondent is illegally carrying the quarry operations even though the lease in his favour expired long ago and there is no

subsisting lease in his favour.

3. After ordering notice before admission this Court by an order dated 2-9-1995 suspended the operation of the impugned order until further

orders. The second respondent has filed a counter-affidavit denying the allegations made by the petitioner and contending inter alia that he is

entitled for renewal of the lease since he has complied with all the necessary formalities and conditions, that he is also lawfully carrying on the

quarry operations on payment of the necessary seigniorage dead-rent and other cases to the Government, that the default is only on the part of the

petitioner and other official respondents, that he cannot be penalised for their default, that the impugned order passed by the lower Court does not

suffer from any error of jurisdiction or other infirmity warranting interference of this Court under Article 227 of the Constitution, that the petitioner

himself is responsible for the delay and non-disposal of the petition for injunction by the lower Court, that the second respondent filed LA. No.

459 of 1994 in O.S. No. 159 of 1989 to direct the petitioner and others to take immediate steps for sending the proposals for renewal of the

lease, that by an order dated 9-11-1994 the Court below directed the petitioner to file a memo informing the Court of the result of the proposals

sent by him but he has not done so and has been taking time from 16-11-1994 and the interim suspension granted by this Court may be vacated

and the revision may be dismissed.

4. I have heard the learned Counsel for the petitioner as well as the learned Counsel for the second respondent. The learned Counsel for the

petitioner contended that the interim injunction granted by the lower Court is ex-facie illegal and without jurisdiction and it is in violation of the

mandatory provisions of the Forest (Conservation) Act, 1980, that as the quarry in question is located in a reserve forest area, no renewal of the

lease can be granted without the prior permission of the Central Government as envisaged under the provisions of the Forest (Conservation) Act,

1980. In support of the said contentions, the learned Counsel for the petitioner relied upon two Full Bench judgments of this Court in G. Raghava

Das and Vs. Government of Andhra Pradesh and Others, and Hyderabad Abrasive and Minerals v. Govt. of A.P. 1990 (1) ALT 180. and a

decision of the Supreme Court in Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 . He further submitted that under the

guise of the injunction order, the second respondent has been illegally carrying on the quarry operations even though the lease in his favour expired

long ago in 1984 and that the lower Court was not at all justified in not disposing of the petition for injunction on merits and in keeping it pending

for more than six years even though the counter-affidavit has been filed and, the impugned order has to be set aside in public interest.

5. On the other hand, the learned senior Counsel for the second respondent has contended that the impugned order is perfectly legal and it is within

the jurisdiction of the lower Court, that the petitioner himself is responsible for the delay in the disposal of the matter and that the allegations made

by the petitioner against the lower Court are wholly unjustified and baseless and this Court acting under Article 227 of the Constitution cannot set

aside or interfere with the order passed by the lower Court as the petitioner failed to question the impugned order by filing an appeal against the

same in time. In support of his contentions the learned senior Counsel has cited the decisions reported in Nagendra Nath Bora and Another Vs.

The Commissioner of Hills Division and Appeals, Assam and Others, . Chintapalli Atchaiah Vs. P. Gopala Krishna Reddy and Another, and S.N.

Kantha Rao v. Commissioner 1988(1) ALT 495.. Finally the learned Counsel for second respondent submitted that it would be just and proper to

direct the lower Court to dispose of the petition for injunction on merits at an early date.

6. It is settled law mat the power of superintendence conferred on the High Court by Article 227 is not confined to administrative superintendence

only but includes the power of judicial revision also and the same may be exercised even suomotu. The existence of an alternative remedy is per

scnotabar for the exercise of power under Article 227. The power under Article 227 is much wider than the power of revision u/s 115 C.P.C. It is

equally well settled that the power under Article 227 is intended to keep the inferior Courts and tribunals within the bounds of their authority and to

see that they act in a legal manner and that it cannot be used for correcting mere errors. However, in cases of manifest injustice or flagrant violation

of law, the High Court will be justified in interfering under Article 227. These principles are well known and it is not necessary to cite authorities for

the above propositions. Reference may, however, be made to a recent judgment of this Court in Sarada Bai and others Vs. Smt. Shakuntala Bai

and another, . wherein my learned Brother Justice Parvatha Rao, after an exhaustive review of case law, concluded that where the order of the

lower Court is arbitrary and is made in gross abuse of jurisdiction, it can be set aside under Article 227 of the Constitution.

7. Applying the above principles, it has to be seen whether the impugned order calls for any interference or not.

8. I do not, however, propose to go into the merits and pass final orders on the injunction petition as the same will have to be dealt with by the

lower Court. I shall only examine the limited question whether the impugned order dated 19-5-1989 granting interim injunction should be allowed

to remain in force till the lower Court finally disposes of the petition on merits. I have already extracted the impugned order above. It does not

contain any reasons whatsoever and appears to have been passed mechanically without application of mind. It does not comply with the

mandatory requirements of Rule 3 of Order 39 C.P.C. Though notice was ordered to the respondents before passing the said order, the fact

remains that notices to respondents 1 and 2 were not yet served and fresh notices were ordered to them. It was, therefore, incumbent on the

lower Court to record the reasons for granting the interim injunction as mandated by the proviso to Rule 3. Failure to record the reasons vitiates

the order and renders it void. In *Kasuganti Ananatha Rao and Anr. v. Kasuganti Aruna* 1985 (2) ALT 339. a Division Bench of this Court

following two earlier Division Bench judgments held that such an order without reasons is void as being without jurisdiction and it is not protected

by Section 99 C.P.C. There is also nothing on record to show that the applicant (second respondent) has complied with clauses (a) and (b) of

Proviso to Rule 3. The above illegalities are further compounded by the failure to comply with the requirements of Rule 3-A of Order 39. In any

case, I see no justification whatsoever for not disposing of the petition so far and to keep it pending for more than six years. Even if one or the

other party had been seeking time repeatedly, the lower Court was not at all justified in keeping the LA. pending for such a long time. Admittedly

the lease expired long ago in the year 1984 itself and even the renewal period has run out by now. Under the guise of interim orders the second

respondent has been successfully carrying on the quarry operations all these years without even a prima facie adjudication of his right for the grant

of renewal. In my view, this amounts to an abuse of process. In this context the learned counsel for the second respondent has pointedly drawn my

attention to the observations of Mr. Justice P.A. Chowdari in *S.N. Kantha Rao v. Commissioner* (6 supra) to the effect that it is the inherent right

of every Court or tribunal, however low it might be in the judicial hierarchy, to regulate its proceedings and to arrange its business and that it would

not be proper for another Court, however high or mighty, to encroach upon that jurisdiction, and that the temptation to set aside the lower Court's

order by a simple fiat should be avoided. The said observations were made by the learned Judge while dealing with an argument advanced in that

case that the order of the Commissioner was liable to be set aside for the sole reason that the same was passed without granting a request for

adjournment. I do not think that the said observations have any relevance or application to the facts of the instant case.

9. For all the foregoing reasons, I am convinced that the impugned order dated 19-5-1989 granting interim injunction is illegal and void and it

should not be allowed to stand. Accordingly the said order is set aside and the lower Court is directed to dispose of the petition for temporary

injunction on merits after hearing both parties and pass appropriate orders thereon in accordance with law within four weeks from the date of

receipt of this order. The C.R.P. is disposed of accordingly. No costs.