

(2014) 04 GUJ CK 0045

In the Gujarat High Court

Case No : Letters Patent Appeal No. 307 of 2013 in Special Civil Application No. 7831 of 2012 and Civil Application No. 3126 of 2013 in Letters Patent Appeal No. 307 of 2013

Jayesh Govind Varde

APPELLANT

Vs

State of Gujarat and 2 Ors.

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 143 FLR 82

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Krunal D. Pandya, Advocate for the Appellant; Utkarsh Sharma, AGP for Respondent(s) No. 1, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vijay Manohar Sahai, J.—We have heard Mr. Krunal D. Pandya, learned advocate for the appellant. By way of the present Letters Patent Appeal, the appellant-original opponent has challenged the order dated 30.11.2012 passed by the learned Single Judge in Special Civil Application No. 7831 of 2012, by which, the learned Single Judge has dismissed the writ petition. The order passed by the Authority under the Minimum Wages Act was challenged before the learned Single Judge.

2. In the writ petition, the Authority under the Minimum Wages Act was not made a party even also in this appeal, the same was not made a party. The learned Single Judge while dismissing the writ petition has not issued a writ of certiorari. This Court on 02.05.2013 has passed the following order:

It has been stated by learned AGP that the land admeasuring 2 H. 60 A. 00 Sq. Mtrs. at Taluka: Waliya is in the name of Govindram Shivilal, the father of the petitioner had liability to pay the amount but no amount is deposited or paid.

Whereas, Mr. Pandya, learned advocate for the appellant states that there are share of other brothers also and amongst the brothers, there is dispute.

Hence, by interim order, it is directed that occupier of the aforesaid agriculture land bearing Survey No. 30 at Village: Mokhadi, ad-measuring 2 H. 60 A. 00 Sq. Mtrs. If deposits the amount of Rs. 30,000/- on or before 31st May, 2013 with the Labour Officer, the aforesaid property may not be attached with the clarification that upon failure to deposit the amount, it would be open to the Labour Officer to request the Mamlatdar for attachment of the property and after attachment, the report will be submitted before this Court for permitting the auction or otherwise.

Stand over to 13th June, 2013.

3. However, the Five Judges' Full Bench of this Court in the case of Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another, rendered in Letters Patent Appeal No. 1149 of 2002, Dated: 26.12.2013, has held as under:-

(M)(x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a SLP before the Supreme Court.

To put it very explicitly take a case where a petition is only under Article 227 of the Constitution of India, invoking superintending powers of the High Court and not under Article 226 of the Constitution of India. After examining the matter, if the court finds substance in the petition and sets aside the order of an authority, court or a tribunal, then against such an order, an LPA would not lie on the argument that since the court has set aside the order it has decided the matter on merits having found substance in the same.

To put it in other words, once a petition is under Article 227 of the Constitution of

India, and while entertaining such a petition under Article 227 of the Constitution of India, if the court allows a petition by setting aside the order impugned, then against such an order no LPA would lie.

xii) If a learned Single Judge, in exercise of a purported power under Article 227 of the Constitution modifies the order of Tribunal/Authority or Court below and thereby partly allows a petition to a certain extent, then in such circumstances, it could not be said that the Court exercised its certiorari jurisdiction and no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself.

However, if a learned Single Judge, in purported exercise of power under Article 226 of the Constitution of India, issues a writ of certiorari, although the same is not maintainable, an appeal under Clause 15 of the Letters Patent would nevertheless be maintainable against such order.

To put it in other words, take a case where a party on his own invokes supervisory jurisdiction under Article 227 of the Constitution of India, and in such a petition, the Court issues a writ of certiorari, then against such an order an LPA would be maintainable.

To put it explicitly clear, take a case where in a petition neither there is a prayer for issue of a writ of certiorari nor the Tribunal/Authority or Court whose order is impugned is impleaded as a party respondent, and despite such being the position, if the Court proceeds to issue a writ of certiorari, then against such an order an LPA would be maintainable.

4. In view of the aforesaid Full Bench decision, this Letters Patent Appeal is not maintainable. Hence, the present Letters Patent Appeal stands dismissed as not maintainable. We, however, make it clear that we have otherwise, not gone into the merit and the dismissal of this appeal will not stand in the way of the appellant in seeking appropriate remedy before the appropriate forum in accordance with law. In view of dismissal of this Letters Patent Appeal, Civil Application No. 3126 of 2013 also stands disposed of.