

(2019) 08 CAL CK 0256

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 1080 Of 2019, Civil Application (CAN)
No. 7417 Of 2019

Pearlescent Meritech Pvt. Ltd. & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Andaman And Nicobar Islands Land Revenue And Land Reforms Regulation, 1966 —
Regulation 28, 28(d)

Citation : (2019) 08 CAL CK 0256

Hon'ble Judges : Biswanath Somadder, J; Arindam Mukherjee, J

Bench : Division Bench

Advocate : Saptansu Basu, Ayan Banerjee, Mrinalini Majumdar, Pradip Kumar Das/

Final Decision : Dismissed

Judgement

Biswanath Somadder, J

By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the application for stay.

The instant appeal arises out of a judgment and order dated 3rd July, 2019, passed by a learned Single Judge in W. P. 11978 (W) of 2019 (Pearlescent Meritech Pvt. Ltd. & Anr. vs. Union of India & Ors).

By the impugned judgment and order, the learned Single Judge was pleased to dispose of the writ petition in the following manner:-

"Although, Mr. Banerjee, Learned Counsel for the A&N Administration submits that the petitioners were permitted a show cause prior to the DC issuing the Order impugned dated 25th June, 2019, upon consideration of all facts, this Court is satisfied that the tenor of the Order dated 25th June, 2019 as well as the rapid subsequent action of the DC evident from documentary evidence produced in support of sealing of the land/lands, and amending the record on the

same date, has left the petitioner remediless.

It is also noteworthy to mention that the petitioners have been engaged in the work of pearl culture since 1993. The documents annexed to the writ petition denote in ample measure the pleasure of the A & N Administration in promoting pearl culture with active efforts at collaboration through officially driven projects.

Therefore, for the Order impugned to factor in commercial dimensions to the project at the end of twenty years of its life and ten years to the grant of the said land/lands is an exercise which does not appear convincing at first sight.

In the backdrop of the above discussion, this Court intends to preserve the appeal provision under Section 28(d) (*supra*) in worthwhile condition for the petitioners to avail.

Accordingly, all consequential action taken by the DC/ South Andamans and The Tehsildar/Ferrargunj on the basis of the Order dated 25th June, 2019 stand permanently stayed.

The Order impugned No.805 dated 25th June, 2019 remains on papers for the Appellate Authority to test its facts, reasonableness and propriety in accordance with law in the event the petitioners are advised to now prefer an appeal.

It is additionally directed that the Order of the Appellate Authority, if adverse to the petitioners, shall not be given effect to for a period of two week after actual receipt of the communication of the Order by the petitioners.

Before signing off with this discussion, this Court reiterates that intervention through exercise of Writ Jurisdiction became necessary in view of the extraordinary situation created by the rapid events following the order dated 25th June, 2019.

WP No.11978 (W) of 2019 stands accordingly disposed of."

The appellant before us, being the writ petitioners, are aggrieved only in respect of a part of the impugned judgment and order whereby the learned Single Judge has been pleased to make certain observations/issued certain directions upon the statutory Appellate Authority, in the event the writ petitioners are advised to prefer an appeal against the order of the Deputy Commissioner, South Andaman District, dated 25th June, 2019.

According to the appellants/writ petitioners, since the order dated 25th June, 2019, was issued by the Deputy Commissioner, South Andaman District, with the approval of the Hon'ble Lieutenant Governor, Andaman & Nicobar Islands, the latter cannot now sit in appeal over the order dated 25th June, 2019, as a statutory Appellate Authority while exercising his powers under Regulation 28 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966.

The other point that the learned advocate for the appellants/writ petitioners has

taken before us is that the order dated 25th June, 2019, stands vitiated by the doctrine of dictation.

We are not in agreement with the stand taken on behalf of the appellants/writ petitioners for reasons which follow.

Merely because the order dated 25th June, 2019, was issued by the Deputy Commissioner, South Andaman District, with the approval of the Hon'ble Lieutenant Governor, Andaman & Nicobar Islands, it ipso facto does not and cannot - in any manner - affect the statutory role of the Hon'ble Lieutenant Governor, Andaman & Nicobar Islands as an Appellate Authority exercising his powers under Regulation 28. Regulation 28(d) clothes the Chief Commissioner (now, the Hon'ble Lieutenant Governor, Andaman & Nicobar Islands) with absolute jurisdiction, power and authority to hear out an appeal emanating from an order passed by a Deputy Commissioner. Although the order dated 25th June, 2019, was issued by the Deputy Commissioner, South Andaman District, with the approval of the Hon'ble Lieutenant Governor, Andaman & Nicobar Islands, it does not indicate any substantive independent adjudication by the Hon'ble Lieutenant Governor, Andaman & Nicobar Islands. As such, when the the Hon'ble Lieutenant Governor, Andaman & Nicobar Islands sits in appeal over the order dated 25th June, 2019, he/she has to apply his/her independent mind to the said order as a statutory Appellate Authority exercising his powers under Regulation 28 and render his appellate order with cogent and justifiable reasons.

For the same reasons as stated above, the doctrine of dictation will not have any manner of application in the facts of the instant case.

The appeal and the application for stay, therefore, are liable to be dismissed and stand accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties.