

(2014) 11 AP CK 0041

In the Andhra Pradesh High Court

Case No : Contempt Case No. 965 of 2013

T. Madan Mohan Reddy

APPELLANT

Vs

B.R. Meena

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Andhra Pradesh Reorganisation Act, 2014 — Section 100, 105, 108, 2(a), 30
Constitution of India, 1950 — Article 124, 214, 217, 219, 224
Contempt of Courts Act, 1971 — Section 2(b)

Citation : (2015) 2 ALD 554 : (2015) 1 ALT 418

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, Senior Counsel for N.V. Raghava Reddy, Advocate for the Appellant; P. Venugopal, Advocate General (AP), L. Ravichander, Amicus Curiae and P. Vishnuvardhan Reddy, Asst. Solicitor General, Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—This contempt case was assigned for final hearing by an administrative order of the Hon'ble the Chief Justice dated 2.7.2014. It was accordingly placed in the list of this Bench on 4.7.2014 and this Court had taken up this matter for hearing finally and the learned counsels for the parties were heard on that day. However, in view of non-availability of the learned amicus curiae appointed by the Hon'ble Single Judge before whom the matter had hitherto been pending, by order dated 20.6.2014 hearing of this matter could not progress. We find that there has been a typographical mistake in recording 20.05.2014 as being the date of the order signed by the Hon'ble single Judge, and the same is accordingly corrected as 20.6.2014, for there was no occasion for any Court to take up this matter on 20th May, 2014 as this Court was on summer vacation.

2. As it appears from the record, on 4.7.2014 the Hon'ble the Chief Justice passed clarificatory order on administrative side mentioning the matter (Contempt Case No. 965 of 2013) has to be heard finally by D.B.-I, i.e., this

Bench. On 2.7.2014 in terms of the direction of the Hon''ble single Judge, the Registrar (General) produced the desired documents mentioned therein in a sealed cover and that sealed cover was kept on record for further consideration. Today, this Court has resumed further hearing of the above case (C.C. No. 965 of 2013), which was partly heard on 4.7.2014.

3. Before we record the respective submissions of the learned counsel, including the learned amicus curiae, we record the background facts which led to filing of this contempt case.

4. It has been filed in relation to an order passed on 25.9.2012 in W.P. No. 33217 of 2011 whereby and whereunder the Hon''ble Sri Justice L. Narasimha Reddy was pleased to dispose of the writ petition finally, and the operative portion thereof reads as under:

Hence, the writ petition is allowed, and the respondents are directed to pay compensation to the petitioners for Ac. 4.72 cents of land in Sy. Nos. 33/9 & 11 of Kakkalapalli Village, Anantapur District by initiating the proceedings under the Land Acquisition Act. The entire proceedings shall be completed within a period of six months from today.

5. The above judgment and order of the Hon''ble single Judge in the said writ petition was taken to Division Bench making an attempt to prefer appeal [W.A. (SR) No. 86859 of 2013] by filing an application for condonation of delay. However, the said application for condonation of delay was dismissed by order dt. 24.6.2013. Against the aforesaid judgment and order dt. 24.6.2013, the then State of Andhra Pradesh and other officials filed a Petition for Special Leave to Appeal (Civil) No. 29559 of 2013. The Hon''ble the Supreme Court was pleased to pass an order on 27.1.2014 as follows:

Issue notice.

Tag with C.A. No. 9317-9321 of 2012 (Main matter C.A. Nos. 7904-7912 of 2012).

We are informed that the aforesaid Special Leave Petition is still pending. Thus, it is clear from the aforesaid order, no stay of operation of the judgment and order of the Hon''ble Single Judge (Justice L. Narasimha Reddy) was granted. In other words, we can safely conclude for the time being, the aforesaid judgment and order at present is operative.

6. It appears from the records at present the contempt case was filed by the petitioner on 29.4.2013. On 30.4.2013 the Hon''ble Sri Justice L. Narasimha Reddy was pleased to pass an order to the effect as follows:

Issue show cause notice to the respondents, returnable in three weeks. Post after Summer Vacation, 2013.

It appears from the record, from time to time on 14.6.2013, 2.7.2013, 5.7.2013, 8.8.2013 and on 29.4.2014 respectively this matter was taken up for

consideration. Then it was placed for further hearing after Summer Vacation in 2014. After Summer Vacation, 2014, His Lordship (Hon"ble Sri Justice L. Narasimha Reddy) took up the matter for hearing on 20.6.2014. In the meantime, counter affidavit was filed by respondent Nos. 1 and 3, on 5.6.2013. No reply affidavit has been filed by the petitioners. Hence, even before Summer Vacation of this year the pleadings were complete.

7. On 20.6.2014 while taking up further hearing of the matter, after completion of filing of counter affidavits as above, the Hon"ble Single Judge was pleased to observe as follows:

In the recent past, important and substantial developments, having far reaching consequences, have taken place. The State of Andhra Pradesh was divided into the State of Telangana and Andhra Pradesh through the Andhra Pradesh Reorganization Act, 2014 (for short the Act).

Chapter IV of the Act deals with High Court. Section 30 directs that on and from the appointed day, which is notified by the President of India on 06.02.2014, the High Court of Judicature at Hyderabad shall be the common High Court for both the States, till a separate High Court for the State of Andhra Pradesh is formed under Article 214 of the Constitution of India read with Section 31 of the Act. Prima facie, the Parliament has decided to constitute a separate High Court for the State of Andhra Pradesh through Sections 31 and 32 of the Act. The seat of the High Court for the State of Andhra Pradesh is left to be notified, under Section 31 and the allocation of the Judges for functioning in the High Court of Andhra Pradesh from the date determined by the President of India is to be done under Section 32 of the Act.

Section 40 directs that from the date mentioned in sub-section (1) of Section 40, the High Court of Judicature at Hyderabad shall have no jurisdiction in respect of the State of Andhra Pradesh.

Serious questions of jurisdiction arise in this scenario. Added to that, the High Court of undivided State of Andhra Pradesh functioned as the one constituted under Article 214 of the Constitution of India. A serious doubt arises as to whether the High Court has been transformed to be the one under Article 231 of the Constitution of India.

Another aspect is that in case the High Court, which was under Article 214 of the Constitution of India, has been transformed into the one under Article 231 of the Constitution of India, the Judges, who were administered the oath, as Judges of the High Court of Andhra Pradesh, are now functioning in the High Court with a different nomenclature, without taking fresh oath.

The learned counsel for the petitioner has advanced certain contentions in this behalf. However, since the issues are of general importance, this Court has requested Sri L. Ravichander, learned Senior Counsel, to assist the Court as *amicus curiae* and he readily agreed for the same.

The learned Assistant Solicitor General shall ascertain from the Union of India, Ministry of Law and Ministry of Home, as to their views on the aspects mentioned above and apprise this Court, of the steps taken at their end.

Registrar General shall also make available the copies of correspondence, that ensued in this behalf for perusal by this Court, on the next date of hearing, in a sealed cover. Post on 27.06.2014.

8. It appears from the records that against the aforesaid order which is apparently an interlocutory one, on 20.6.2014 one third party wanted to prefer an appeal in contempt appellate jurisdiction and this appeal was not registered by the office on account of the question of maintainability, hence it was placed before this Bench being appropriate one. However, by order dated 27th June, 2014 this Court directed the Registry to register the appeal only for registration purpose treating the same being Letters Patent Appeal and then by same order the matter was directed to be placed before the Hon"ble the Chief Justice for taking note of the observations made therein. In that order of the Division Bench dated 27th June, 2014, as it appears from the records, an opinion was expressed that the appeal was required to be heard by a Larger Bench. It was made clear in that order that it was not an order of reference nor of expressing opinion for referring the matter to Larger Bench on the point observed by the Hon"ble Single Judge, only for disposal of the Letters Patent Appeal. It appears from the record the Hon"ble the Chief Justice, on administrative side, while taking note of the observations of the Division Bench dt. 27.06.2014 constituted a Larger Bench comprising three Hon"ble Judges of this Court for hearing and disposal of L.P.A. No. 2 of 2014. It further appears from the record that the aforesaid Larger Bench is yet to sit and even as on today there has been no information that the aforesaid Bench sat for taking up the above L.P.A. for hearing.

9. The Hon"ble single Judge took up the matter for further hearing on 27th June, 2014 in the context of the above observations recorded on 20.6.2014. When the Hon"ble single Judge was pleased to pass further order, which is again an interlocutory one in nature, like previous order dt. 20.6.2014, which reads as under:

Learned senior counsel, who was appointed as Amicus curie expressed the view that operation of Section 40 of the Andhra Pradesh Reorganisation Act, 2014 (for short the Act), as it stands now, would result in serious consequences pertaining to jurisdiction and opined that steps for division of the Court ought to have been taken. Learned Assistant Solicitor General submitted that he addressed letters to the Ministry of Home and Ministry of Law and he is awaiting the response within one week.

The Registrar (General) has placed before this Court, a set of papers. The set however contains only certain letters addressed by him to the authorities of the State Government and some notifications. He did not place any material pertaining to the steps for division of the High Court and the state judiciaries. It

is not known as to whether any communication has been received by him or it was directly sent to the office of the Chief Justice, if any. One thing, which runs common across all the communications, is the invocation of Sections 79 and 100 of the Act, which apply purely to services and are just transitional measures.

Way back on 12.03.2014, the Chief Secretary of the Government addressed a letter to the Registrar (General) as well as all the Heads of Departments, for taking necessary steps for giving effect to the Act. The reply given by the High Court through Registrar (General) was that it has been decided to invoke provisions of Section 79 read with Section 77 of the Act. On 26.03.2014, the Special Chief Secretary of the Governor addressed a letter drawing the attention of the Registrar (General) to Sections 30 and 43 of the Act and requested him to place the factual position before the Hon"ble the Chief Justice. In the letter, dated 09.04.2014, the Registrar (General) has just informed the Secretary to Governor that the High Court has resolved and decided that the existing officers of the District Courts and Subordinate thereto for the existing State of A.P. will continue to function in terms of the provisions of Sections 79 and 77 of the Act until further orders are passed. This was before the appointed day came into force. Subsequent thereto, no tangible steps whatever were taken.

Registrar (General) is directed to place before this Court, the respective copies of the proceedings, through which the decisions referred to in his communications were taken, by the next date of hearing. He shall also verify as to whether any communications were received from the Central Government directly and if possible, make the copies of the same available.

Post on 04.07.2014.

It does not appear from the record any appeal was sought to be preferred against subsequent order dt. 27.6.2014, rather it appears from the record that earlier order dt. 20.6.2014 was acted upon by all concerned, including the parties. It will not be inappropriate to record here that issues raised by the Hon"ble Single Judge (not by the parties) relate to intricate question of interpretation of the Act mentioned in the order vis-a-vis provisions of the Constitution and could not be decided by a learned Single Judge vide Rule 2 of the Rules of this Court, but at least by a Division Bench, if not a larger Bench.

9A. It appears from the records, thereafter by administrative order dated 2nd July, 2014, this matter was placed before this Bench for hearing on 4th July, 2014. While placing the note, on which the Hon"ble Chief Justice passed the aforesaid administrative order dated 2nd July, 2014, the Registrar (Judicial) recorded as follows:

It is respectfully submitted that thereafter the said appeal was numbered as L.P.A. No. 2 of 2014. It is further respectfully submitted that the Hon"ble Full Bench has not yet sat. It is also submitted that Hon"ble Sri Justice Raja Elango has been on leave from 30.6.2014 to 8.7.2014. It is submitted that the date of the sitting of the Hon"ble Full Bench is not yet known.

It is further respectfully submitted that the order of the Hon''ble Court points out as to the division of the Hon''ble High Court in pursuance of the provisions of the Andhra Pradesh Reorganisation Act, 2014.

It is also respectfully submitted that the Hon''ble Supreme Court of India in the case of State of Rajasthan Vs. Prakash Chand and Others, at paragraph 10 and also set at paragraph 59 there of held thus:

10. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (supra) shows that the administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the first amongst the equals, on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73, which reads thus:

73. Daily Cause List. The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Days List.

59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne Judges cannot pick and choose any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(8) That Shethna, J. had no authority or jurisdiction to send for the record of the disposed of writ petition and make comments on the manner of transfer of the writ petition to the Division Bench or on the merits of that writ petition.

(9) That all comments, observations and findings recorded by the learned Judge in relation to the disposed of writ petition were not only unjustified and unwarranted but also without jurisdiction and make the Judge coram non judice.

(10) That the allegations and comments made by the learned Judge against the Chief Justice of the High Court, the Advocate of the petitioner in the writ petition and the learned Judges constituting the Division Bench which disposed of Writ Petition No. 2949 of 1996 were uncalled for, baseless and without any legal sanction.

(11) That the observations of the learned Judge against the former Chief Justices of the High Court of Rajasthan to the effect that they had illegally drawn full daily allowance while sitting at Jaipur to which they were not entitled, is factually incorrect, procedurally untenable and legally unsustainable.

(12) That the finding recorded by the learned Judge against the present Chief Justice of India, Mr. Justice J.S. Verma, that till his elevation to the Supreme Court, he had, as Chief Justice of the Rajasthan High Court, illegally drawn a daily allowance of Rs. 250 while sitting at Jaipur and had thereby committed criminal misappropriation of public funds lacks procedural propriety, factual accuracy and legal authenticity. The finding is wholly incorrect and legally

unsound and makes the motive of the author not above personal pique so wholly taking away dignity of the judicial process.

(13) That the disparaging and derogatory comments made in most intemperate language in the order under appeal do no credit to the high office of a High Court Judge.

(14) That the direction of Shethna, J. to issue notice to the Chief Justice of the High Court to show cause why contempt proceedings be not initiated against him, for transferring a part-heard writ petition from his Bench to the Division Bench for disposal, is not only subversive of judicial discipline and illegal but is also wholly misconceived and without jurisdiction.

On 4th July, 2014, this Bench, in pursuance of the aforesaid administrative order, has taken up for hearing from the stage as was left by the Hon''ble Single Judge. Thereafter, another administrative note was placed by the learned Registrar (Judicial) on 4th July, 2014 after the matter was taken up for hearing. Subsequently, after matter was heard-in-part by this Bench, the Hon''ble Chief Justice, on administrative side, clarified that the matter has to be heard finally by this Division Bench DB-I.

9B. It appears from following judgment of the Supreme Court in case of State of Rajasthan v. Prakash Chand (supra), the Hon''ble Chief Justice on administrative side has placed this matter before this Bench.

In terms of the order dated 20th June, 2014, the learned Assistant Solicitor General placed a communication made by the Joint Secretary, Ministry of Home Affairs enclosing the letter addressed by the Secretary, Home Ministry, Union of India to the then Chief Secretary of the State of Andhra Pradesh. This was taken on record at the hearing on 7th July, 2014.

10. In the aforesaid development, the matter has been heard out finally by this Court and hearing thereof was concluded.

11. In the counter affidavits, none of respondents officials took up the points at any point of time as recorded by the Hon''ble Single Judge on 20.6.2014. There was no occasion as at the time of filing, the Andhra Pradesh Reorganisation Act, 2014 (hereinafter referred to as Act 2014), was not enacted. We notice, even on 20.6.2014 no material was placed before the Hon''ble Single Judge to take note of the subsequent event, namely, enactment of Act 2014 or any notification of enforcement of the same. Today, at the time of hearing, a Gazette Notification has been submitted before us, which was issued on 4.3.2014 mentioning appointed day as 2nd day of June, 2014 for the purpose of Act 2014. On 29.4.2014 when the Hon''ble Single Judge took up this matter for further consideration by that time, the Gazette Notification was issued on 4.3.2014 but on that occasion there was no thought of raising aforesaid point as the aforesaid notification was not placed to bring it on record. For the first time ever it has been produced before us. We, taking note of the authenticated document of Act

2014, proceed to decide the question as formulated by the Hon"ble Single Judge when the matter was pending before His Lordship.

12. The learned amicus curiae would contend that if Section 40 of Act 2014 is read in isolation, there would be confusion with regard to territorial jurisdiction of this Court in relation to territory of residuary State of Andhra Pradesh. While placing reliance on various Sections of the Act, 2014, namely, Sections, 30, 31, 40 and 105 of Act 2014, he would contend that those provisions are to be read harmoniously in order to find intention of the Legislature in relation to functioning of this High Court and that of the Hon"ble Judges who were appointed before the appointed day, namely 2.6.2014. He submits for the assistance of this Court that the Apex Court is consistently taking the view that when there is possibility of two interpretations, the Court shall lean to the same that does not lead to any absurdity or functional vacuum of any institution or operation of statutory provisions. In this connection he referred to the following decisions of the Supreme Court.

(i) Bhatia International v. Bulk Trading S.A. and another

(ii) Jagir Singh and others v. State of Bihar and another

(iii) Rakesh Wadhawan and others v. Jagdamba Industrial Corporation and others

(iv) National Insurance Co. Ltd. v. Laxmi Narain Dhut

(v) Raipur Development Authority v. Anupam Sahkari Griha Nirman Samiti and others

He also drew our attention to the text on Interpretation of Statutes 12th Edition at page 124 to contend on the second point raised by the Hon"ble Single Judge whether fresh oath is required under the Constitution of India after this Court has been made Common High Court for both the States.

13. The learned Assistant Solicitor General has placed communication of the Central Home Secretary to the then Chief Secretary of the undivided State of Andhra Pradesh indicating stand of Central Government. The learned Assistant Solicitor General is candid enough to say that the aforesaid communication cannot be construed to be an order of the Hon"ble His Excellency the President, as contemplated under Section 108 of Act 2014.

14. While agreeing to the opinion expressed by the learned amicus curiae, learned Advocate General for the State of Andhra Pradesh, Sri P. Venugopal, appearing for all the respondents would contend that if there is any ambiguity with regard to functioning of this Court as a Common High Court, the aforesaid Sections mentioned by the learned amicus curiae are to be read harmoniously for removal thereof. Thereupon it would appear functioning of this Court as a Common High Court for both the States till a separate High Court is formed for residuary State of Andhra Pradesh as required to be done by an appropriate Notification by the President of India under relevant constitutional provision.

Regarding the second point of administering oath to the Hon''ble Judges who are to function as Judges of the Common High Court, he submits that oath is required to be administered when there is an appointment of the Hon''ble Judges by appropriate Notification by the Hon''ble His Excellency the President of India either initial or on transfer under Article 217. As there has been no fresh order of appointment, administering oath afresh to the Hon''ble Judges who are functioning in the Common High Court, does not and cannot arise.

15. Sri C.V. Mohan Reddy, learned Senior Advocate appearing for the petitioners, submits that on the aforesaid issues the argument advanced by the learned Advocate General is correct proposition of law. He also submits that if there is any confusion and for removal thereof, Statute has to be interpreted by the Court taking into consideration the intention of the Legislature and to see that the purpose of the Statute is not defeated and does not lead to any absurdity.

16. After hearing the learned counsel for the parties on the aforesaid points raised by the Court and not by the parties herein, we now find that apparent confusion has arisen because of provisions of Section 40 of Act 2014, which is set out hereunder:

40. Transfer of proceedings from Hyderabad High Court to Andhra Pradesh High Court. Right to appear or to act in proceedings transferred to Andhra Pradesh High Court:- (1) Except as hereinafter provided, the High Court at Hyderabad shall, as from the date referred to in subsection (1) of Section 30, have no jurisdiction in respect of the State of Andhra Pradesh.

(2) Such proceedings pending in the High Court at Hyderabad immediately before the date referred to in sub-section (1) of section 30 as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Andhra Pradesh shall, as soon as may be after such certification, be transferred to the High Court of Andhra Pradesh.

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section or in section 33, but save as hereinafter provided, the High Court at Hyderabad shall have, and the High Court of Andhra Pradesh shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court at Hyderabad before the date referred to in sub-section (1) of section 30:

Provided that if after any such proceedings have been entertained by the High Court at Hyderabad, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Andhra Pradesh, he shall order that they shall be so transferred and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court at Hyderabad

(a) before the date referred to in sub-section (1) of section 30, in any proceedings transferred to the High Court of Andhra Pradesh by virtue of sub-section (2), or

(b) in any proceedings with respect to which the High Court at Hyderabad retains jurisdiction by virtue of sub-section (3), shall for all purposes have effect, not only as an order of the High Court at Hyderabad, but also as an order made by the High Court of Andhra Pradesh.

It appears Section 40 was designed to make a provision for transfer of proceedings from Hyderabad High Court to Andhra Pradesh High Court and the lawyers right to appear or to act in proceedings transferred to Andhra Pradesh High Court and the power of two High Courts to deal with the proceedings after transfer. It is mentioned therein that from the date referred to in sub-section (1) of Section 30 jurisdiction in respect of State of Andhra Pradesh and from sub-section (1) of Section 30 it would be apparent two dates conceivably having been mentioned, one being appointed day, another, though it is not mentioned specifically can be inferred with certainty, is another - the date on which creation of separate High Court for the State of Andhra Pradesh is made under Article 214 of the Constitution read with Section 31 of Act 2014. It is to be noted that the word date is chosen, not the words appointed day. Under clause (a) of sub-section (1) of Section 30 of Act 2014, no day or date has been mentioned, whereas appointed day has been mentioned in Section 2(a) which reads as follows:

(a). appointed day means the day which the Central Government may, by notification in the Official Gazette, appoint;

It is on record by Official Gazette Notification, 2.6.2014 is notified as the appointed day. As it has been rightly submitted by the learned amicus curiae and Mr. Mohan Reddy, learned Senior Counsel, on principles of Interpretation of Statutes for removal of confusion the approach of the Court is to arrive at an interpretation that does not lead to any absurdity or impossibility, and the Hon''ble Apex Court is consistent on this view. In this connection, we refer to the decisions of the Hon''ble Supreme Court hereunder.

17. In Jagir Singh case (supra), at paragraph 20 of the said report the Hon''ble Apex Court laid down the rule of interpretation as follows:

20. The general rule of construction is not only to look at the words but to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances. Sometimes definition clauses create qualification by expressions like unless the context otherwise requires; or unless the contrary intention appears; or if not inconsistent with the context or subject-matter. Parliament would legislate to

little purpose, said Lord Macnaghten in *Netherseal Co. v. Bourne* (1889) LR 14 AC 228, if the objects of its care might supplement or undo the work of legislation by making a definition clause of their own. People cannot escape from the obligation of a statute by putting a private interpretation on its language. The courts will always examine the real nature of the transaction by which it is sought to evade the tax.

In *Anupam Sahkari Griha Nirman Samiti and others* (supra), in paragraph 16 of the report, the Hon''ble Supreme Court was pleased to explain the interpretation of the Statutes in clear terms as follows:

16. Whenever there are two possible interpretations, the one which sub-serves to the intent of the legislature is to be accepted. The object of the aforesaid Act is for planned development and thus the interpretation, which upholds any such scheme should be followed. Heydons principle is now well recognised in interpreting any enactment. It lays down that courts must see (a) what was the law before making of the Act; (b) what was the mischief or defect for which the law did not provide; (c) what is the remedy that the Act has provided; (d) what is the reason of the remedy. It states that courts must adopt that construction which suppresses the mischief and advances the remedy. This has been approved by this Court in a number of decisions. One of them is *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, .

In *Bhatia International case* (supra), in paragraph 15 of the report the Supreme Court almost reiterated the same principle of interpretation of Statutes, as under:

15. It is thus necessary to see whether the language of the said Act is so plain and unambiguous as to admit of only the interpretation suggested by Mr. Sen. It must be borne in mind that the very object of the Arbitration and Conciliation Act of 1996, was to establish a uniform legal framework for the fair and efficient settlement of disputes arising in international commercial arbitration. The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but all the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the courts duty to expound arises with a caution that the court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the courts have taken the view that the judicial art of interpretation and appraisal is imbued

with creativity and realism and since interpretation always implied a degree of discretion and choice, the courts would adopt, particularly in areas such as, constitutional adjudication dealing with social and defuse (sic) rights. Courts are therefore, held as finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing (see *Corocraft Ltd. v. Pan American Airways*, (1968) 3 WLR at page 732, *State of Haryana and Others Vs. Sampuran Singh and Others*,). If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (See *Johnson v. Moreton* (1978) 3 All ER 37 and *Stock v. Frank Jones (Tipton) Ltd.* (1978) 1 All ER 948). In selecting out of different interpretations, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In *Shannon Realities Ltd. v. Ville de St. Michel* (924) AC page 185 at 192-193, Lord Shaw stated:

Where words of a statute are clear, they must, of course, be followed, but in Their Lordships opinion where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

This principle was accepted by Subba Rao, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an officer of Customs. *The Collector of Customs, Baroda Vs. Digvijaysinhji Spinning and Weaving Mills Ltd.,* .

In another case in *Rakesh Wadhawan and others* (supra), the Supreme Court reiterated the same position at paragraph 24 which reads as under:

24. It is a settled rule of construction that in case of ambiguity, the provision should be so read as would avoid hardship, inconvenience, injustice, absurdity and anomaly. Justice G.P. Singh in his *Statutory Interpretation* (2001 Edn.) states (at p. 113):

In selecting out of different interpretations the court will adopt that which is just, reasonable and sensible rather than that which is none of those things as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity,

and inconsistency. Similarly, a construction giving rise to anomalies should be avoided.

In *Laxmi Narain Dhutt* case (supra), the Apex Court, considering its previous judgments, at paragraph 33 of the report held as follows:

33. A statute is an edict of the legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for and words chosen to communicate such indefinite referents are bound to be in many cases, lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. (See *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*,

18. The learned Advocate General for the State of Andhra Pradesh has drawn our attention to a recent pronouncement of the Supreme Court in *Suresh Kumar Koushal and another v. Naz Foundation and others* on the interpretation of statutes which speaks on the same line as in the earlier decisions.

19. The aforesaid consistent views of the Supreme Court help us to hold that any provision of the Statute has to be read harmoniously with other portion thereof in the context of the provision, if necessary by removing any mischief, applying Heydon Rule of interpretation, to arrive at such an interpretation that does not lead to absurdity, impossibility, creation of an irretrievable crisis in the operation of the statute.

20. It also emerges on a reading of above authorities that when there are two possible interpretations, one that is sensible and the only possible one, the same has to be adopted in preference to another that leads to impossibility in any sense in the scheme of things. Keeping in view this legal aspect, we now examine the relevant provisions of the said Act. If the date mentioned in Section 40 read with Section 30 of the Act is taken as being appointed day, undoubtedly this High Court would be for the State of Telangana alone and not of Andhra Pradesh. Inevitable result would be that the State of Andhra Pradesh would be without any High Court as there is no notification for establishment of High Court for the residuary State of Andhra Pradesh. It is impossible to think that any State or Union Territory will be without a High Court, taking note of the constitutional provisions of Article 214 of the Constitution of India which mandates. There shall be a High Court for each State. This Article does not require a separate High Court for each State or Union Territory individually and this is clear from Article 231 of the Constitution of India which is as follows:

231. Establishment of a common High Court for two or more States.- (1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

(2) In relation to any such High Court.-

(a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;

(b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the subordinate courts are situate; and

(c) the reference in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat:

Provided that if such principal seat is in a Union territory, the references in articles 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

The Scheme of the Common High Court for two States in the aforesaid provision has overriding effect over other provision of the Constitution in this context as it starts with a non obstante clause. To put it negatively, it is not necessary always that each State must have its own separate High Court and a common High Court can be contemplated, so it has been done under Section 30 of Act 2014. Such interpretation of treating the date mentioned in sub-section (1) of Section 40 as the appointed day, 02.6.2014, is absolutely absurd and leads to constitutional vacuum. The intention of the Legislature in this context has to be

gathered from the other provisions of Act 2014.

21. It is useful in this context to refer to Section 105 of Act 2014 which is reproduced hereunder:

105. Transfer of pending proceedings:- (1) Every proceeding pending immediately before the appointed day before a court (other than High Court), tribunal, authority or officer in any area which on that day falls within the State of Andhra Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of the State of Telangana, stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1) it shall be referred to the High Court at Hyderabad and the decision of that High Court shall be final.

(3) In this section

(a) proceeding includes any suit, case or appeal; and

(b) corresponding court, tribunal authority or officer in the State of Telangana means

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Andhra Pradesh to be the corresponding court, tribunal, authority or officer.

It clearly mentions fora where proceedings are pending on the appointed day and stand transferred. It excludes the proceedings pending on the appointed day before the High Court. In this section, the Legislature carefully used the words appointed day and not any other date. Event of transfer takes place when there is existence, either by creation or separation, of correspondingly counter fora. In our view, Section 40 has to be read subject to Section 105 of Act 2014. If we interpret the date mentioned in sub-section (1) of Section 40 read with Section 30 as being the date when a separate High Court for the residuary State of Andhra Pradesh is created as required and mentioned in Section 31 of Act 2014 read with Article 214 of the Constitution, it leads to the possibility, reality and avoidance of a constitutional vacuum and non operation of above Act in this context. The intention of the Legislature in Act 2014 is with regard to functioning of this High Court as a common institution for two separate States even after the appointed day till a date is notified as mentioned in Section 31 of Act 2014 for a separate High Court for the State of Andhra Pradesh. The moment a separate High Court is created by notification, under Article 214 of the Constitution read with Section 31 of Act 2014, the present High Court at Hyderabad will not have

any territorial jurisdiction over the residuary State of Andhra Pradesh, and it also sounds logical. Even after creation, the High Court at Hyderabad will still retain jurisdiction in respect of appeal, application for leave to the Supreme Court, application for review and other proceedings that include contempt proceedings in relation to territory of Andhra Pradesh and it will be clear from sub-section (3) of Section 40 of the Act, 2014. Thus, we have no hesitation to hold that this High Court shall continue to function as the common High Court till a separate High Court is constituted under the Scheme of Act 2014.

22. While addressing the second question regarding administering of oath to the existing Hon'ble Judges, who are functioning on or before appointed day for the High Court at Hyderabad, we are of the view that administration of oath is required when there is appointment by the Hon'ble President of India under Article 217 of the Constitution. We set out Article 217 hereunder:

217. Appointment and conditions of the office of a Judge of a High Court.- (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty two years; Provided that.-

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court;

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such courts in succession.

Article 219 of the Constitution provides for oath or affirmation by Judges of High Courts and said Article reads as under:

219. Oath or affirmation by Judges of High Courts.- Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

From a reading of Article 219 it is clear appointment either as a fresh one or by way of transfer, is a sine qua non. We do not find in the Act, 2014, the Hon''ble Judges functioning on the appointed day were appointed afresh, they are logically holding office on the strength of their initial appointment and it is continuing.

23. Even the oath form of clause VIII in Third Schedule to the Constitution relating to Judges of a High Court will also make the position clear and it reads thus:

I, A.B., having been appointed Chief Justice (or a Judge) of the High Court at (or of) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge, and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

(emphasis supplied)

In view of clear constitutional provision, help of any text book on Interpretation of Statutes, which is not a precedent in the eye of law, is not required. Thus, we hold that there is no need to take oath afresh on the appointed day.

24. We hold therefore that this Court, and for that matter any of the Hon''ble Judges who has been functioning on or before the appointed day, will continue to function as Judges of the common High Court for both the States.

25. Now, we shall take up the contempt case on merit. It is undisputed position that the Hon''ble single Judge passed an order while disposing of the writ petition and has now become operative though the issue is pending before the Hon''ble Supreme Court. We have checked up the allegations made in the contempt application. The prayer portion or the body of the application nowhere says that there has been any willful disobedience of the order passed by the Hon''ble Single Judge. It is submitted that it has been mentioned that there is blatant violation of the order. We are unable to accept the submission of Sri C.V. Mohan Reddy, learned Senior counsel appearing for the petitioners, that blatant word denotes willful disobedience, we think that there must be prima facie allegation of willful and deliberate disobedience as required under Section 2(b) of the Contempt of Courts Act which reads as under:

2(b) civil contempt means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court

It is settled position of law that when law requires a thing to be done in a particular manner, it has to be done in that manner alone, else not at all (See AIR 1936 253 (Privy Council)).

Therefore, unless in clear terms, allegation of willful disobedience is prima facie established as required in the aforesaid Section, this Court cannot proceed with the contempt case.

26. However, we accept the alternative argument of the learned Senior Advocate appearing for the petitioners that this application may be used as one for implementation of the order in respect of which contempt proceedings has arisen (See Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others, . So, we proceed to do so. We have noted the explanation in the counter affidavit that the order of the Hon''ble Single Judge was passed without consideration of the order passed awarding compensation for resumption of the assigned land and it is not a case of acquisition of land. According to us, the respondents cannot take this plea collaterally in this proceedings. Order is still valid and subsisting. Of course, this plea if so advised may be taken before the Hon''ble Apex Court. At the moment, the petitioners are debarred from raising this plea. It appears that the respondents are now bound to proceed with the matter for payment of compensation under the Land Acquisition Act.

27. We accordingly direct the respondents to implement the order of this Court under the relevant provisions of the Land Acquisition Act which was prevailing on the date of passing of the order, of which implementation is sought. This has to be done within a period of six months from the date of receipt of a copy of this order. This order and direction passed by us will be subject to the decision which might be rendered by the Hon''ble Supreme Court in the aforesaid case.

28. Thus, we dispose of this matter finally.

29. Since the Larger Bench has not sat as yet, the Registrar (Judicial) shall bring to the attention of the Hon''ble Special Bench about the final disposal of the contempt case as the Letters Patent Appeal is sought to be preferred against an interim order dt. 20.6.2014.

30. We return the sealed envelope to the Registrar (Judicial), as we feel the same is wholly unnecessary as this matter has been decided on interpretation of provisions of the Constitution and the aforesaid statutory provisions of Act 2014.