

A

KUMARAN SILK TRADE (P) LTD.

v.

DEVENDRA AND ORS.

OCTOBER 19, 2006

B

[P.K. BALASUBRAMANYAN AND H.K. SEMA, JJ.]

Constitution of India, 1950:

C

Article 136—Order dismissing petition for review—Special leave petition against—Maintainability of—Held, not maintainable.

Article 136—Special leave petition dismissed as withdrawn—Held, petitioner cannot file special leave petition again by invoking Article 136.

D

The petitioner got a plan sanctioned for construction of a basement, parking, ground floor and 3 floors. It constructed additional floors 4, 5 and 6 flouting the approved plan, building bye-laws and other relevant enactments. Contempt application was filed. High Court passed an order dated 2.3.2001. Appellant challenged that order by filing appeal before this Court. That appeal was dismissed as withdrawn with liberty to approach High Court to file Review petition. Against the same order of High Court dated 2.3.2001, appeal No.4577 of 2006 is filed.

E

SLP No.17771/2006 is filed seeking permission to challenge the order of High Court dated 7.9.2006 passed in Review application.

F

SLP No.17773/2006 is filed seeking permission of this Court for challenging judgment of High Court striking down amendments brought about to Section 113A of Tamil Nadu Town and Country Planning Act, 1971 in which petitioner was not party on the ground of being affected party.

G

Dismissing the appeal and the petitions, the Court

HELD: 1.1. SLP No.17771/2006 challenges the order of High Court refusing to review its earlier decision. No petition for special leave to appeal under Article 136 of the Constitution of India could be entertained against such an order. Respondent had argued that petitioner is also seeking to

H

challenge the original order by way of the petition for special leave to appeal. But it is seen that against the original order, a petition for special leave to appeal was filed in this Court and that petition was dismissed. Since the petition for special leave to appeal has already been dismissed by this Court, it is no more open to the petitioner to seek to challenge the original order in this Court again by invoking Article 136 of the Constitution of India.

[673-G; 674-C-D]

Shankar Motiram Nale v. Shiolalsing Gannusing Rajput, [1994] 2 SCC 753; *Suseel Finance & Leasing Co. v. M. Lata and Ors.*, [2004] 13 SCC 675 and *M.N. Haider and Ors. v. Kendriya Vidyalaya Sangathan and Ors.*, [2004] 13 SCC 677, relied on.

1.2. CA No.4577/2006 is filed seeking to challenge the order dated 2.3.2001 in Contempt Application. Against the said decision, the petitioner had already filed appeal but had withdrawn the same reserving only liberty in itself to seek a review of the decision of the High Court. In view of this, it is not open to the petitioner to seek to challenge the original order again in this Court. Hence the Civil Appeal sought to be filed has only to be rejected. Even otherwise, on the facts and in the circumstances of the case and especially taking note of the conduct of the petitioner, there is no reason to interfere with the order on the review petition in the Contempt Application in exercise of jurisdiction under Article 136 of the Constitution of India. Therefore, even assuming that the first petition for special leave to appeal against the order refusing to review is maintainable, no relief can be granted to the petitioner therein in view of the finality that would be attained by the order on the petition for review of the order dated 2.3.2001 in Contempt Application No.560 of 2000 in view of refusal of this court to exercise discretionary jurisdiction in that case. Thus, the petition for special leave to appeal and the Appeal are liable to be rejected. [674-E-F; 675-F-H; 676-A]

Kunhayammed & Ors. v. State of Kerala & Anr., [2000] 6 SCC 359 and *Abbai Maligai Partnership Firm & Anr. v. K. Santhakumaran & Ors.*, (1998) 7 SCC 386, referred to.

2. Coming to SLP No.17773 of 2006, in view of conclusion in the first petition for special leave to appeal, and in the Appeal, there is no necessity for or justification in granting any permission to the petitioner for challenging the order of the High Court in the connected writ petitions to which it is not a party. In view of refusal of this court to entertain the challenge of the petitioner to the orders against it, the petitioner and the authorities

A who are respondents, are bound to implement the orders of the High Court to ensure that the unauthorized constructions are removed and the majesty of law is upheld. In view of this, it is not necessary or proper to grant to the petitioner the permission sought for. The conduct of petitioner also does not warrant it. [676-A-C]

B CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 17771 of 2006.

C From the Judgment and final Order dated 11.9.2006 of the High Court of Judicature at Madras in Review Application No. 84 of 2005, Review Sub Application No. 366/2001 and Order dated 3.8.2000 in Writ Appeal No. 1171/2001.

WITH

C.A. No. 4577 of 2006

D AND

S.L.P. (C) No. 17773 of 2006

E Soli J. Sorabjee, Shanti Bhushan, C.A. Sundaram, Arun Jaitely, Rajeev Dhawan, R.V. Viswanathan, Nagasubramanian, N. Sridhar and V. Mohana for the Appellant.

A.K. Ganguli, V.G. Pragasam and S. Vallinayagam for the Respondents.

The Judgment of the Court was delivered by

F **P.K. BALASUBRAMANYAN, J.** SLP(C) No. 17771 of 2006 (CC No. 7240 of 2006.

G 1. This petition of special leave to appeal seeks to challenge the order of the High Court dated 7.9.2006 passed in Review Application No. 84 of 2005 and Review Sub-Application No. 366 of 2001 in Writ Appeal No. 1171 of 2000. An attempt has been made to indicate in the petition for special leave to appeal that the order dated 3.8.2000 rendered in Writ Appeal No. 1171 of 2000 is also being appealed from.

Civil Appeal No. 4577 of 2006 (D.No. 24316 of 2006.

H 2. This appeal purports to challenge the order of the High Court dated

2.3.2001 passed in Contempt Application No. 560 of 2000. The application is filed with a delay of 1970 days in filing it. It may be noted that challenging the very same order the appellant had filed Civil Appeal No. 1837 of 2001. That appeal was withdrawn by the appellant herein. The order dated 9.11.2001 reads as under: A

“Learned senior counsel for the appellant seeks leave of the Court to withdraw this appeal. The appeal is dismissed as withdrawn with liberty to the appellant to approach the High Court for appropriate relief by way of a Review Petition. B

It is made clear that the order made by us on 23.3.2001 to maintain status quo, shall continue for a period of one week from today. C

What is attempted now is to file yet another appeal against the very same order of the High Court invoking Section 19 of the Contempt of Courts Act, 1971.

SLP (C) No. 17773 of 2006 (CC No. 7585 of 2006) D

3. This petition for Special Leave to Appeal is sought to be filed by seeking the permission of this Court by way of I.A. No. 1 of 2006 for challenging the judgment rendered by the High Court of Madras in Writ Petition No. 18898 of 2000 and other connected matters striking down the amendments brought about to Section 113A of the Tamil Nadu Town and Country Planning Act, 1971 by Amending Acts 31/2000, 17/2001 and 7/2002 and issuing other consequential and incidental directions. The petitioner was not a party to any of the writ petitions but submits that the petitioner is affected by the decision rendered by the High Court in writ petitions and the possible rights the petitioner may have under the amended provision stood annihilated by the decision. E F

4. The first of the petitions for Special Leave to Appeal, as indicated, challenges the order of the High Court refusing to review its earlier decision. No petition for special leave to appeal under Article 136 of the Constitution of India could be entertained against such an order. It has been so held by this Court in *Shankar Motiram Nale v. Shiolalsing Gannusing Rajput*, [1994] 2 SCC 753. The said decision has been followed by another Bench of which one of us (H.K. Sema, J.) was a party in *Suseel Finance & Leasing Co. v. M. Lata and Ors.*, [2004] 13 SCC 675 wherein this Court held that a petition for special leave to appeal against an order dismissing a petition for review H

A is not maintainable. This Court distinguished two cases cited in which the question itself had not been adverted to or decided. Another Bench of this Court in *M.N. Haider and Ors. v. Kendriya Vidyalaya Sangathan and Ors.*, [2004] 13 SCC 677 again considered the questions and held that a petition for special leave to appeal is not maintainable. This Court also held that once a
 B petition for special leave to appeal is found not maintainable, no order can or should be passed thereon except an order of dismissal of the same.

5. With respect, we see no reason to depart from the position adopted in these decisions. All that was argued was that the petitioner is also seeking to challenge the original order by way of the petition for special leave to
 C appeal. But it is seen that against the original order dated 3.8.2000 a petition for special leave to appeal, No. 5333 of 2001 was filed in this Court and that petition for special leave to appeal was dismissed on 24.9.2001 also taking into account the conduct of the petitioner in this Court. Since the petition for special leave to appeal has already been dismissed by this Court, it is no more open to the petitioner to seek to challenge the original order in this Court
 D again by invoking Article 136 of the Constitution of India. In view of this it has to be held that the first of the petitions for special leave to appeal, is not maintainable.

6. We have already noticed that the Appeal attempted to be filed seeks to challenge the order dated 2.3.2001 in Contempt Application No. 560 of 2000
 E and that against the said decision the petitioner had already filed Civil Appeal No. 1837 of 2001 but had withdrawn the same reserving only liberty in itself to seek a review of the decision of the High Court. In view of this, it is not open to the petitioner to seek to challenge the original order again in this Court after withdrawing the earlier appeal, reserving only a liberty in itself of
 F seeking a review of the original order.

7. Hence, the Civil Appeal sought to be filed has only to be rejected.

8. In view of our conclusions that the first petition for special leave to appeal and the appeal are not maintainable, it is not appropriate for us to pass any other order therein as has been observed by this Court in *Suseel Finance & Leasing Co. v. M. Lata and Ors.* (supra). We may, however, broadly
 G observe that the petitioner having got a plan sanctioned for construction of a basement, parking ground floor and three floors had not only flouted the permission and the plan in respect of the construction of those floors including the not providing of any parking space, but even while the litigation was
 H pending and it was permitted to carry on the construction in terms of the

approved plan. had gone ahead and constructed additional floors 4, 5 and 6 without any regard to the Building bye-laws and other relevant enactments and showing scant respect to the orders of Court. Such conduct does not entitle the petitioner to any order by way of indulgence or discretion from this Court. We have already held that the petitioner is not entitled to any order as of right.

9. It was contended that in view of the order of this Court in C.A. Nos. 4479 of 2004 and 4480 of 2004, the petition for special leave to appeal and the appeal under Section 19 of the Contempt of Courts Act must be held to be maintainable. As we see it, all that this Court did was to condone the delay on the part of the petitioner in filing one of the Review Petitions in the circumstances of the case and directing that the contentions sought to be raised in review including the one based on the amendment to Section 113A of the Town & Country Planning Act, 1971 may be considered. Obviously, a decision on the Review Petitions themselves was left to the High Court and the High Court has dismissed the Review Petitions after considering them on merits. If such a dismissal cannot be challenged under Article 136 of the Constitution of India, nothing would turn upon the fact that the Review Petitions were directed to be decided afresh on merits by this Court. As a matter of fact at the earlier stage this Court did not consider the question whether one of the appeals against the order dismissing the Review Petition on merits was maintainable. At best the order of remand and the decision in *Kunhayammed and Ors. v. State of Kerala and Anr.*, [2006] 6 SCC 359 would enable the petitioner to get over the ratio of the three judges bench decision in *Abbai Maligai Partnership Firm and Anr. v. K. Santhakumaran and Ors.*, [1998] 7 SCC 386 that the seeking of a review after the petition for special leave to appeal was dismissed without reserving any liberty in the petitioner was an abuse of process.

10. Even otherwise we find no reason to interfere with the order on the review petition in the Contempt Application in exercise of our jurisdiction under Article 136 of the Constitution of India on the facts and in the circumstances of the case and especially taking note of the conduct of the petitioner. Therefore, even assuming that the first petition for special leave to appeal against the order refusing to review the decision in Writ Appeal No. 1171 of 2000 is maintainable, no relief can be granted to the petitioner therein in view of the finality that would be attained by the order on the petition for review of the order dated 2.3.2001 in Contempt Application No. 560 of 2000 in view of our refusal to exercise our discretionary jurisdiction in that case.

A 11. Thus, the petition for special leave to appeal and the Appeal are liable to be rejected.

B 12. Coming to the second petition for special leave to appeal with permission, we think that in view of our conclusion in the first petition for special leave to appeal, and in the Appeal, there is no necessity for or justification in granting any permission to the petitioner for challenging the order of the High Court of Madras in the connected writ petitions to which it is not a party. In view of our refusal to entertain the challenge of the petitioner to the orders against it, the petitioner and the authorities who are respondents, are bound to implement the orders of the High Court to ensure that the unauthorized constructions are removed and the majesty of law is upheld. In view of this, we do not think it necessary or proper to grant to the petitioner the permission sought for. The conduct of the petitioner also does not warrant it. We, therefore, decline permission to the petitioner to challenge the decision of the High Court dated 23.8.2006 in Writ Petition No. 18898 of 2000 and the connected cases.

D 13. Hence, the Petition for Special leave to Appeal and the Civil Appeal sought to be filed are rejected. The order of *status quo* granted, is vacated.

D.G.

Special Leave Petitions and Appeal dismissed.