

REGISTRAR GENERAL,
HIGH COURT OF JUDICATURE AT MADRAS

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v.

THE STATE, REPRESENTED BY THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH, CHENNAI & ANOTHER

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(Criminal Appeal Nos. 272-274 of 2022)

FEBRUARY 23, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Land Grabbing: Transfer of 864 cases pending in civil courts to the jurisdictional courts – Original complainant in case pending on the file of the Special Court for Land Grabbing Cases, filed petition before the High Court, seeking transfer of the said case from the Special Court to the Court of Metropolitan Magistrate – Allowed/disposed of, by the High Court – Thereafter, on ‘mentioning’ made by the Additional Public Prosecutor in the said disposed of petition, the Single Judge of the High Court directed transfer of 82 and 782 cases/final reports filed respectively, pending on the files of the Special Courts to the jurisdictional Courts – In the said orders, no proceedings were pending before the Single Judge, and none of the parties to the cases ordered to be transferred were parties before the High Court – Sustainability of – Held: Not sustainable – It cannot be understood, how in a disposed of matter with respect to only one case, further orders could have been passed by the High Court transferring approximately 864 cases pending in different Special Courts in different districts, to the concerned jurisdictional Courts that too, on a ‘special mentioning’ – Said procedure adopted by the Single Judge is unknown to law – Practice of passing such orders on a ‘special mentioning’ that too, in a disposed of matter is deprecated – Impugned judgment and orders passed by the Single Judge of the High Court directing transfer of 864 cases from the Special Courts to the jurisdictional Magistrates, being wholly without jurisdiction, are quashed and set aside – However, would be subject to the decision of this Court in the pending proceedings against the order by the High Court quashing the Government Order creating Anti Land Grabbing Special Cells, which was stayed by this Court, whereby the jurisdiction of the Special Courts to deal with the Land Grabbing Cases continues – Judicial depreciation.

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- A *Code of Criminal Procedure, 1973: s. 482 – Power of High Courts under – Held: Though the powers of the High Court u/s. 482 are wide and are in the nature of inherent power yet, the said power cannot be exercised suo motu in a sweeping manner and beyond the contours of what is stipulated under the said Section – High Courts need to be more circumspect before passing such orders.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 272-274 of 2022.

- From the Judgment and Order dated 05.08.2019, 27.08.2019 and C 29.08.2019 of the High Court of Judicature at Madras in Crl. OP No.20889 of 2019.

V. Krishnamurthy, AAG, R. Shunmugasundaram, Adv. General, Dr. Ram Sankar, K. Elangovan, L.

- Sivakumar, Sharu Kumar, Suvethan, Ms. Sujatha Bagadhi, Ms. D Shaarumathi, Yusuf, B. Balaji, Dr. Joseph Aristotle S., Ms. Preeti Singh, Ms. Nupur Sharma, Sanjeev Kumar Mahara, S. Thananjayan, Ms. Aaina Verma, Ms. Jaswanthi Anbuselvam, Ms. Promila, K. S. Mahadevan, Rangarajan, Ms. Swati Bansal, Rajesh Kumar, E. C. Agrawala, T. R. B. Sivakumar, B. Sridhar, Venkateswara Rao Anumolu, S. Gowthaman, R. E Nedumaran, K. V. Jagdishvaran, Ms. N. P. Haibila, Ms. G. Indira, Anish R. Shah, M. P. Srivignesh, Mithunkumaar N., Jose Abraham, Advs. for the appearing parties.

The following Order of the Court was passed :

ORDER

- F 1. Application for permission to file the special leave petitions is allowed. Delay in filing the special leave petitions is condoned.
 1a. Leave granted.
 2. Feeling aggrieved and dissatisfied with the impugned final G judgment and orders dated 05.08.2019, 27.08.2019 and 29.08.2019 passed by the High Court of Judicature at Madras in Criminal O.P. No. 20889/ 2019, by which the learned Single Judge of the High Court has directed to transfer 864 cases in which the final reports have been filed before the concerned Special Courts for Land Grabbing Cases pending in various districts and has directed the concerned Special Courts before whom H

the final reports are filed to return back the final reports filed by the concerned investigating officers of the respective police stations in order to enable those final reports to be filed before the concerned jurisdictional Courts, the High Court of Judicature at Madras through the Registrar General has preferred the present appeals, being in a quandry with regard to the implementation of the impugned orders though passed on the judicial side.

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3. The facts leading to the present appeals in a nutshell are as under:

That the State of Tamil Nadu issued G.O. (Ms) No. 423 dated 28.07.2011 creating 36 Anti Land Grabbing Special Cells in the State of Tamil Nadu with one cell each at the State Police Headquarters, 7 Commissionerates and 28 Districts except Karur, Tiruvannamalai and Nagappattinam Districts. That consequent upon G.O. (Ms) No. 423 dated 28.07.2011, Special Courts were constituted exclusively to deal with Land Grabbing Cases. That the aforesaid G.O. was the subject matter of controversy before the High Court.

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3.1 By a common judgment and order dated 10.02.2015 passed in Writ Petition No. 18872/2014 and other allied writ petitions, the High Court has set aside G.O. (Ms) No. 423 dated 28.07.2011 and G.O. (Ms) No. 451, Home (Court III) Department dated 11.08.2011. While allowing those writ petitions, the High Court has also observed that the State Government is at liberty to enact any appropriate legislation on the lines of A.P. Land Grabbing (Prohibition) Act, 1982 or better legislations. The common judgment and order dated 10.02.2015 passed in Writ Petition No. 18872/2014 and other allied writ petitions is the subject matter before this Court by way of Special Leave Petition (Civil) Nos. 6050-6078 of 2015.

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3.2 That by order dated 27.02.2015, this Court, while issuing notice in the aforesaid special leave petitions, stayed the operation and implementation of the judgment and order dated 10.02.2015 passed by the High Court. Meaning thereby, pursuant to the said interim order, the aforesaid G.O. No. 423 dated 28.07.2011 and G.O. No. 451 dated 11.08.2011 are in operation and the jurisdiction of the Land Grabbing Cases is to be continued with the Special Cell/Special Courts.

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3.3 That, during the pendency of the aforesaid special leave petitions, one, S. Natarajan, original complainant in Crime No. 434/2015

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- A pending on the file of the Special Court for Land Grabbing Cases No. II, Chennai, filed Criminal O.P. No. 20889/2019 before the High Court, seeking transfer of the said case from the Special Court to the Court of CCB and CBCID, Metropolitan Magistrate, Egmore, Chennai. By order dated 05.08.2019, the learned Single Judge of the High Court has allowed/disposed of the said petition and has directed the concerned police officials to take back the final report from the Special Court for Land Grabbing Cases No. II, Chennai and to file the same before the CCB and CBCID, Metropolitan Magistrate, Egmore, Chennai.
- B 3.4 That thereafter, on ‘mentioning’ made by the learned Additional Public Prosecutor in the disposed of matter, being the aforesaid Criminal O.P. No. 20889/2019, disposed of vide order dated 05.08.2019, a further order dated 27.08.2019 came to be passed by the learned Single Judge of the High Court directing transfer of other 82 cases pending on the files of the Special Courts to the jurisdictional Courts. That thereafter, again on a ‘special mentioning’ made by the learned Additional Public
- C Prosecutor in the disposed of matter being Criminal O.P. No. 20889/2019, the learned Single Judge by order dated 29.08.2019 has directed transfer of 782 cases pending in the Special Courts to the jurisdictional Courts. Orders dated 05.08.2019, 27.08.2019 and 29.08.2019 are the subject matter of the present appeals.
- D E 4. We have heard the learned counsel appearing on behalf of the High Court. By the impugned orders, the learned Single Judge of the High Court has directed transfer of the cases/final reports filed/pending in the Special Courts exclusively to deal with the Land Grabbing Cases to the respective jurisdictional Courts. It is to be noted that when the learned Single Judge passed orders dated 27.08.2019 and 29.08.2019,
- F no proceedings were pending before the learned Single Judge. The original Criminal O.P. No. 20889/2019 was already disposed of by the learned Single Judge vide order dated 05.08.2019. The learned Single Judge had become functus officio insofar as the aforesaid matter was concerned. From orders dated 27.08.2019 and 29.08.2019, it appears that the said
- G orders are passed on the ‘special mentioning’ made by the learned Additional Public Prosecutor. How such orders transferring approximately 864 cases pending in different Special Courts in different districts to the concerned jurisdictional Courts could have been passed in a disposed of matter and more particularly when none of the parties to the cases which are ordered to be transferred were parties before the High Court? To
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pass such type of orders on a ‘special mentioning’ that too, in a disposed of matter is unheard of. It is required to be noted that the main Criminal O.P. No. 20889/2019 was with respect to only one case, being Crime No. 434/2015 on the file of the Special Court for Land Grabbing Cases No. II, Chennai and it was not a Public Interest Litigation (PIL). Therefore, it is not understandable, how in a disposed of matter with respect to only one case, further orders could have been passed by the High Court transferring approximately 864 cases pending in different Special Courts in different districts, that too, on a ‘special mentioning’. The procedure adopted by the learned Single Judge for passing orders dated 27.08.2019 and 29.08.2019 directing to transfer 864 cases from the Special Courts in different districts to the concerned jurisdictional Courts is unknown to law. The practice of passing such orders on a ‘special mentioning’ that too, in a disposed of matter is to be deprecated. Therefore, under the circumstances, orders dated 27.08.2019 and 29.08.2019 being wholly without jurisdiction, are unsustainable and deserve to be quashed and set aside.

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5. Even otherwise on merits also, orders dated 05.08.2019, 27.08.2019 and 29.08.2019 transferring the cases/final reports from the concerned Special Courts for Land Grabbing Cases pending in different districts to the concerned jurisdictional Magistrates in different districts of the State can be said to be in the teeth of the interim order passed by this Court dated 27.02.2015 in Special Leave Petition (Civil) Nos. 6050-6078/2015. Once the judgment and order passed by the High Court quashing and setting aside G.O. No. 423 dated 28.07.2011 and G.O. No. 451 dated 11.08.2011 came to be stayed by this Court, the jurisdiction of the concerned Special Courts to deal with the Land Grabbing Cases continues. From the impugned orders, it appears that the learned Single Judge of the High Court was aware of the pending proceedings before this Court and despite that the impugned orders are passed transferring the final reports/cases from the concerned Special Courts to the jurisdictional Magistrates. Under the circumstances also, impugned orders passed by the High Court dated 05.08.2019, 27.08.2019 & 29.08.2019 passed in Criminal O.P. No. 20889/2019 are unsustainable and deserve to be quashed and set aside.

6. In view of the above and for the reasons stated above, the present appeals are allowed. Impugned judgment and orders dated 05.08.2019, 27.08.2019 & 29.08.2019 passed by the learned Single Judge

- A of the High Court of Judicature at Madras in Criminal O.P. No. 20889/2019 directing transfer of approximately 864 cases from the concerned Special Courts to the concerned jurisdictional Magistrates are hereby quashed and set aside. However, the same shall be subject to the final outcome and the decision of this Court in the pending proceedings being
- B Special Leave Petition (Civil) Nos. 6050-6078 of 2015. All these appeals are accordingly allowed.
 - 7. Before parting with these appeals, we observe that the High Courts ought to be mindful and conscious about the consequences of passing orders such as those impugned in these appeals. Though the powers of the High Court under Section 482 of the Code of Criminal Procedure are wide and are in the nature of inherent power yet, the said power cannot be exercised *suo motu* in a sweeping manner and beyond the contours of what is stipulated under the said Section. We hope and trust that the High Courts would be more circumspect before passing such orders which are impugned and set aside in these appeals.
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Nidhi Jain

Appeals allowed.