

S.B. CIVIL WRIT PETITION NO.2027/2012
S.B. CIVIL WRIT PETITION NO.2026/2012

Date of Order :: 17.4.2015

HON'BLE MR. JUSTICE ARUN BHANSALI

Mr. R.R. Nagori, Senior Advocate assisted by
Mr. S.L. Sukhwai, for the petitioner/s.

Mr. M.C. Bhoot, Senior Advocate assisted by
Mr. Arpit Bhoot, for the respondent/s.

An application has been filed by the respondent seeking recalling of the order dated 26.4.2012 and in the alternative for modification of the said order.

The writ petition was filed by the petitioners questioning the validity of the judgment dated 30.11.2011 passed by the Board of Revenue.

When this writ petition came up before this Court on 26.4.2012, after hearing learned counsel for the respondents, who appeared on caveat, the writ petition was admitted and it was ordered that the parties shall maintain status quo and were restrained from alienating or creating third party right over the subject land till final disposal of the writ petition. However, the parties were granted liberty to file application after decision of the larger Bench.

In view of the submissions made that the issue involved in the writ petition was pending consideration before the larger Bench, it is submitted by learned counsel for the respondents that the issue claimed to be involved in the present writ petition and pending consideration before the larger Bench, in fact, does not arise in the present matter and in any case the matters cannot be kept hanging awaiting decision of the larger Bench as

the judgments, which are already governing the field, hold the field till such time different view is taken by the larger Bench.

It is further submitted that the petitioners are enjoying the fruits of the land in dispute despite declaration of their status as that of trespasser for over 30 years now and therefore, the order passed by the Court needs to be recalled / modified.

Learned counsel for the petitioner submitted that the order dated 26.4.2012 was passed after hearing the parties and on consideration of the submissions made by the respondents, no case for recalling the order is made out by the respondents merely on account of making submissions that the issue pending before the larger Bench is not involved in the present writ petition; when, in fact, the issue is involved as would be evident from the material available on record and therefore, the application filed by the respondents deserves to be dismissed.

I have considered the rival submissions and have perused the material available on record.

It is apparent from the order-sheet dated 26.4.2012 that counsel for the respondents, who appeared on caveat was heard, whereafter the submission of learned counsel for the petitioner regarding the issue involved in the writ petition was noticed, whereafter the present writ petition was admitted and the order regarding interim relief was also passed disposing of the stay application.

From a look at the record, it prima facie cannot be said that the issue as indicated in the order dated 26.4.2012 is not involved in the present writ petition. However, in view of the submissions made by learned counsel for the respondents that hearing of the matter cannot be postponed indefinitely awaiting

decision of the larger Bench and in view of the judgment of the Hon'ble Supreme Court in the case of *Ashok Sadarangani & Anr. v. Union of India & Ors.* : AIR 2012 SC 1563, the writ petition itself may be listed for hearing on 11.08.2015 alongwith SBCWP No.2027/2012.

The application filed by the respondents stands disposed of accordingly.

(ARUN BHANSALI), J.