

i  
SLP(C)No. 7849 OF 2000

ITEM No.7

Court No.10

SECTION XIIA  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.7849/2000

(From the judgement and order dated 12/10/1999 in WP 24485/98  
of The HIGH COURT OF A.P AT HYDERABAD)

OSMANIA UNIVERSITY

Petitioner (s)

VERSUS

S.V. PARTHASARATHI RAO AND ORS.

Respondent (s)

(With prayer for interim relief)  
( For Final Disposal )

Date : 18/07/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH  
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s)

Mr.H.S. Gururaja Rao,Sr.Adv.,  
Mr. T.V. Ratnam,Adv.

For Respondent (s)

Mr.M.N. Rao,Sr.Adv.,  
Mr. D. Mahesh Babu,Adv.,  
Mr.M.N. Rao,Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

Leave granted.

The appeal is allowed, the impugned order passed by  
the High Court is set aside. The Special Court to proceed  
with the suit LGC No.153/96 in accordance with law along  
with the Transfer Suit No.36 of 1986 from the file of IInd  
Addl.Sub Judge,Rangareddy District,A.P. and to decide the  
same in accordance with law without being influenced by any  
observations made in any interlocutory orders in connected  
matters. No order as to costs.

.SP1

(Vijay Kumar Sharma)  
Court Master

(K.K. Chadha)  
Court Master

Signed order is placed on the file.

.PL55

L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4404 OF 2001@@

Osmania University

Appellants

Versus

S.V. Parthasarathi Rao & Ors.

Respondent

O R D E R@@  
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....J.....  
.SP2

Leave granted.

Heard learned counsel for the parties.

It is stated that respondent nos.1 and 2 etc. had filed an IA No.1047/96 in L.G.C. No.153/96, before the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, Hyderabad seeking consideration of issue of res-judicata as preliminary issue because the same was involved in OS No.1/1956 on the file of IInd Additional Judge, City Civil Court, Hyderabad. The Special Court dismissed the application by observing as that question of res judicata may or may not arise on facts and in any case it requires investigation of facts at the time of trial. The Court further observed that under Order XIV Rule 2 of C.P.C. it is the wide discretion of the Court to raise or not to raise preliminary issue and that the present land grabbing case was connected with the other land grabbing case which was filed by the State which was the paramount title holder.

Against the order of Special Court, respondents no.1 and 2 filed Writ Petition No.24485 of 1998 before the High Court of Andhra Pradesh at Hyderabad and sought quashing of the order dated 28.7.1998 of the Special Court passed in IA No.1047/96 in LGC No.153/96. The High Court by passing the impugned judgment dated 12.10.1999 set aside the order of the Special Court and directed to decide the issue of res judicata as a preliminary issue, by holding as under:-

.....L.....I.....T.....T.....T.....J.....  
.SP1

"In view of the circumstances explained above including the proceedings which were fought earlier coupled with the nature of the activities which the University is carrying on, it is correct that the issue of jurisdiction has to be decided by the Special Court as a preliminary issue. As such, according to us, the rejection of the petitioners' application by the Special Court is quite incorrect. The idea behind deciding a particular issue as preliminary issue is to put an end to the dispute at the threshold itself instead of unnecessarily allowing the parties to face the litigation for a long period and compelling them to face hardships. It further suggests that the Court before whom an issue is raised has to apply its mind to the pleadings and other

circumstances and make itself sure as to its jurisdiction. Hence, the Court below would have been justified if it had decided the issue raised by the petitioners as a preliminary issue."

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

In our view, the impugned judgment/order passed by the High Court is, on the face of it, illegal and erroneous. The High Court has not given any reason why the contention of res judicata is required to be decided as a preliminary issue by a Special Court in a suit filed by the University before the Special Court. In the judgment, the High Court has not pointed out any circumstances which would call for interference with the order passed by the Special Court and for raising of the preliminary issue. Hence, the impugned order requires to be set aside.

In the result, the appeal is allowed, the impugned judgment passed by the High Court is set aside. The Special Court to proceed with the suit LGC No. 153/96 in accordance with law along with the Transfer Suit No. 36 of 1986 from the file of IInd Additional Sub-Judge, Rangareddy District, A.P. and to decide the same in accordance with law without being influenced by any observations made in any interlocutory orders in connected matters. The Special Court is requested to expedite the proceedings and dispose of the same as early as possible. No order as to costs.

.SP1

.....J.  
( M.B. Shah)

.....J.  
( Doraiswamy Raju)

New Delhi,  
July 18, 2001