

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

Writ Petition No. 15987 of 2005

Order:

The instant writ petition is filed seeking Certiorari to set aside the order, dated 16.11.2004, made in Case No.F1/3564/2001 on the file of the first respondent, as illegal and violative of Article 14 of the Constitution of India and consequently to direct the first respondent to take up the case for hearing on merits by duly considering restoration petition, dated 10.12.2004.

2. Heard Sri L. Prabhakar Reddy, learned counsel for the petitioners, Sri A. Nazeet Khan, learned counsel for the respondents 3, 5 and 6, Sri Resu Mahender Reddy, learned counsel for the respondents 10 and 11 and the learned Government Pleader for Revenue appearing for the respondents 1 and 2.

3. No steps have been taken to bring LRs of the deceased respondents 9 and 12, hence the case against respondents 9 and 12 was abated, as per the orders of this Court, dated 29.12.2010. The writ petition against respondent No.8 was dismissed for default, as per the orders of this Court, dated 23.06.2011.

4. The petitioners clubbed two prayers; one is to set aside the dismissal order, dated 16.11.2004, passed by the first respondent in Case No.F1/3564/2001, on the ground that the same was dismissed for non-prosecution and the second relief is to direct the first respondent to consider the restoration application filed on 10.12.2004, under Order 41 Rule 19 or Order 9 Rule 9 read with Section 151 CPC, and to restore or readmit the said appeal to its file by setting aside the dismissal order, dated 16.11.2004.

5. During the course of arguments, learned counsel for the petitioners would submit

that the said petition filed under Order 41 Rule 19 or Order 9 Rule 9 read with Section 151 CPC is still pending on the file of the first respondent and makes a request to give direction to the first respondent to dispose of the said application on its own merits contending that this Court in **G. Krishna Murthy v. The District Judge, Guntur and others**, while dealing with the provisions of Section 16(1) and (2) of the A.P (Andhra Area) Tenancy Act, held that the authority under the Act has no power to dismiss an application filed under Section 16(1) of the Act for default and, thus, he prays to set aside the very order passed by the first respondent, dated 16.11.2004.

6. Learned counsel for the respondents 10 and 11 would submit that after passage of ten years period it is not desirable to entertain the writ petition.

7. The fact of pendency of petition filed by the petitioners under Order 41 Rule 19 or Order 9 Rule 9 read with Section 151 CPC on the file of the first respondent is not disputed by the non-applicants. Hence, it is desirable at this stage to direct the first respondent to dispose of the petition filed by the petitioners under Order 41 Rule 19 or Order 9 Rule 9 read with Section 151 CPC, as even written arguments of the appellants have been filed along with the said petition.

8. Accordingly, the instant writ petition is disposed of directing the first respondent to dispose of the petition filed by the petitioners under Order 41 Rule 19 or Order 9 Rule 9 read with Section 151 CPC as expeditiously as possible, by issuing notices to both sides in the said application. There shall be no order as to costs.

9. As a sequel thereto, the miscellaneous applications, if any, pending in the Writ Petition shall stand closed.

A. SHANKAR NARAYANA, J

Date: 09.11.2015

Nsr