HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.2847 and 2858 of 2015

Date: 27-11-2015

Between:

Dr. B.R. Ambedkar SC Youth Association,

Represented by its Secretary G. Nagaraju and

3 others

.... Petitioners

AND

Sri Lakshmi Ganapathi Chillara Varthaka

Sangam, represented by its President and another

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.2847 and 2858 of 2015

ORDER:

The petitioners herein are the defendants in O.S.No.105 of 2014 filed by 1st respondent herein on the file of III Additional Junior Civil Judge, Visakhapatnam, seeking permanent injunction against the petitioners herein and the 2nd respondent herein. In the said suit, I.A.No.81 of 2014 was filed seeking temporary injunction and no orders were passed in the said application. During the pendency of the said application, the 1st respondent herein filed I.A.No.305 of 2014 seeking appointment of an Advocate Commissioner and I.A.No.306 of 2014 seeking permission to deposit the tax/Asil that is being collected by the 2nd respondent herein. When those two applications were allowed by the learned III Additional Junior Civil Judge, these Civil Revision Petitions are filed.

2. C.R.P.No.2847 of 2015 arises out of the order dated 01-06-2015 passed in I.A.No.305 of 2014, whereas C.R.P.No.2858 of 2015 arises out of the order dated 01-06-2015 passed in I.A.No.306 of 2014.

3. The Court below perused the affidavit filed in support of the application seeking appointment of an Advocate Commissioner and also the application seeking permission to deposit of Asilu that is being collected by the 2nd respondent/5th defendant. No grounds were stated justifying their applications in spite of which, the Court below by its order dated 01-06-2015 allowed the applications with the following orders:

> "**<u>I.A.No.305 of 2014</u>**
>
> Heard. Perused the record. As there is great controversy with regard to existence of schedule property and the respondent's counter does not contain specific objection for appointment of Advocate Commissioner, this Court is inclined to allow this petition by appointing Advocate Commissioner only for noting down physical features of schedule property, which is not at all collection of evidence.
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> In the result, the Interlocutory Application is allowed. Sri Sanjay Kumar, Advocate is appointed as an Advocate Commissioner for petition purpose i.e. to note down the physical features. His fee is fixed at Rs.5000/- to be payable by petitioner. Report is to be reached by 24-06-2015"
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> **<u>I.A.No.306 of 2014:</u>**
>
> Heard. Perused the record and as per the version of respondents, 5th respondent has not collecting Asil (tax) and hence this Court is inclined to direct the petitioner to deposit tax into GVMC till disposal of the suit, as there is a matter of record that respondent GVMC used to collect Asil but it continued it.
>
> In the result, the Interlocutory Application is allowed partly duly permitting petitioner to deposit tax into GVMC instead of Court."

The Court below should have seen that at mere asking Advocate Commissioner cannot be appointed for noting down physical features. There should be justifiable ground for appointment of an advocate commissioner.

In the circumstances, the order dated 01-06-2015 passed in I.A.No.305 of 2014 as extracted above is erroneous and is accordingly set aside. In respect of Asilu that is being collected by the 2nd respondent herein, it is the duty and responsibility, if any, of the 5th defendant/2nd respondent herein and it is for the 5th defendant to take necessary steps for collection of Asilu, the petitioners cannot seek the aid of the court for deposit of the said amount. In that view of the matter, the view taken by the Court below permitting the plaintiff to deposit the Asilu is also erroneous.

In the circumstances, the orders dated 01-06-2015 passed in I.A.No.305 of 2014 and in I.A.No.306 of 2014 are set aside and the Civil Revision Petitions are allowed accordingly. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. **RAMALINGESWARA RAO, J**

Date: 27-11-2015

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