

**HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

WRIT APPEAL No.147 OF 2014 AND WRIT PETITION No.1847 OF 2014

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COMMON JUDGMENT: (per the Hon'ble Sri Justice Dilip B. Bhosale)

Writ Appeal No. 147 of 2014

This writ appeal is preferred against the order dated 08-07-2013 passed by learned single Judge in Writ Petition No.21716 of 2012, whereby the said writ petition, filed by respondent No.1, has been disposed of with certain directions. In the writ petition, respondent No.1 alleged that the appellants i.e., respondent Nos.1 to 3 in the writ petition, were trying to illegally occupy part of their land by dumping materials like cement poles etc., in disregard to the orders of this Court dated 04-06-2012 in Writ Petition No.3858 of 2012. This Court while disposing of the writ petition in paragraph 3 observed thus:

“In that view of the matter, the Joint Collector, Prakasam District, is suomotu impleaded as the 5th respondent in the Writ Petition so as to give a quietus to the dispute. The Joint Collector, Prakasam District, is directed to have the subject lands surveyed with the help of the officials of the Survey Department so as to demarcate the boundaries between the petitioner society's land in Sy. No. 218 and the APSPDCL's land in Sy. No. 217 of the village within four weeks from the date of receipt of a copy of this order. This survey shall be undertaken after giving due notice to both the parties and in their presence. Pending this exercise, the interim order granted by this Court restraining the APSPDCL from interfering with the possession of the petitioner society over its land in Sy. No. 218 of the village shall continue. In the event the material dumped thereon has not been removed as directed by this Court on 27-08-2012, the APSPDCL shall also complete removal of the same forthwith. The parties shall abide by the decision of the Joint Collector, Prakasam District, with regard to the boundaries subject to just exceptions. The charges payable for the survey shall be borne by the APSPDCL.”

Learned Senior Counsel appearing for the appellants at the outset invited our attention to the second last sentence in the aforementioned paragraph to contend that the right of the appellants to challenge the survey report of the Assistant Director of Survey and Land Records in appeal under Section 11 of the Andhra Pradesh Survey and Boundaries Act, 1923 (for short, 'the Act') cannot be curtailed by order of the Court. He submits that in view of the directions issued by this Court, survey has been done, with which the appellants are not happy. According to the appellants, the Assistant Director of Survey and Land Records did not carry out the survey properly and, therefore, they would like to challenge the survey report in appeal. He submits, the appellants would be satisfied if they are allowed to file appeal under Section 11 of the Act against the survey report submitted by the Assistant Director of Survey and Land Records. He did not raise any other contention.

Learned counsel appearing for respondent No.1 on the other hand submits that the appellants cannot be allowed to file appeal against the survey report under Section 11 of the Act since the order of the learned single Judge was passed by consent of the parties. Learned counsel for the appellants, however, denies that they gave any consent, as submitted by learned counsel for respondent No.1. In view thereof, it would not be possible to hold that the appellants gave consent, apart from the fact that the order does not record any consent of the appellants. In any case right to file appeal, conferred under statute, cannot ordinarily be curtailed by order of the Court. Moreover, parties in the present case had not by consent agreed to abide by the survey report. Learned counsel for respondent No.1 could not and did not dispute that the report such as the report of the Assistant Director of Survey and Land Records is appealable under Section 11 of the Act.

In the circumstances, reserving the right of the appellants to challenge the report of the Assistant Director of Survey and Land

Records in appeal under Section 11 of the Act, we dispose of this appeal. All contentions of the parties, insofar as survey report is concerned, are kept open.

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Writ Petition No. 1847 of 2014

In view of the order passed on the appeal, learned counsel for the petitioner prays for withdrawal of the writ petition, with liberty to the petitioner to file appeal under Section 11 of the Act challenging the survey report of the Assistant Director of Survey and Land Records.

Writ petition is disposed of as withdrawn with liberty as prayed for.

Consequently, miscellaneous petitions in the appeal as well as in the writ appeal, if any, also stand disposed of. No costs.

DILIP B. BHOSALE, J

A. RAMALINGESWARA RAO, J

28-01-2015

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