

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE**

**AND**

**HON'BLE SRI JUSTICE S.V. BHATT**

**W.A.No.496 of 2015**

**PC:** *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard learned Special Government Pleader and  
Smt. M.Bhaskara Lakshmi.

Respondents in W.P.No.7854 of 1995 are the appellants herein.

The appeal is filed challenging the order dated 03.08.2004 in W.P.No.7854 of 1995. The facts and circumstances of the case are that admittedly in the years 1971 and 1975, the appellants granted D-form pattas to respondents. On 01.08.1979, assigned land was ordered for resumption by the 2<sup>nd</sup> appellant herein. The respondents assailed the resumption order in W.P.No.7182 of 1978. Being unsuccessful at the first instance, the respondents filed W.A.No.467 of 1979. On 30.12.1985, the writ appeal filed by the respondents was disposed of with a direction to file appeal before the Revenue Divisional Officer/1<sup>st</sup> appellant herein. The appeal was accordingly presented and is pending before the 1<sup>st</sup> appellant. The appellants have, during the pendency of appeal, taken steps to assign the subject matter of W.P.No.7854 of 1995 in favour of third parties.

The respondents hence were constrained to file W.P.No.7854 of 1995.

Through the order impugned in the appeal, the learned Single Judge, after taking note of failure to file reply in spite of granting sufficient time to the respondents and having regard to the limited prayer not to create third party interest in respect of the assigned land which was the subject matter of appeal before

1<sup>st</sup> appellant, disposed of the writ petition as follows:

“Even though the present writ petition was admitted on 20.04.1995, no

counter affidavit has been filed by the respondents/Government. There being no response from the respondents, in spite of lapse of nearly 10 years from the date of filing the writ petition and in spite of granting sufficient time to them to file counter, it has to be presumed that the case purforth by the petitioners in this writ petition is true and correct, and the respondents have no case to defend, and as such, the writ petition deserves to be allowed as prayed for”.

The leaned Special Government Pleader appearing for the appellants vehemently contends that the very basis for filing

W.P.No.7875 of 1995 is that the respondents filed appeal and it

was pending before the 1<sup>st</sup> appellant. According to the learned counsel, the appeal was not presented in proper form and consequently, for all purposes, it shall have to be treated that no appeal is pending before the 1<sup>st</sup> appellant. According to the learned counsel, as no appeal is filed or pending, the State is justified in creating third party interest in favour of Harijans.

We have perused the order under appeal. No doubt, the resumption order was passed on 01.08.1979. The respondents herein have been pursuing the legal remedies against the resumption order dated 01.08.1979 by filing writ petition and appeal. A Division Bench of this Court through order dated 30.12.1985 in W.A.No.467 of 1979 permitted the respondents

herein to pursue the remedy of appeal before 1<sup>st</sup> appellant.

The respondents, in terms of direction in writ appeal, presented an appeal before 1<sup>st</sup> respondent may be not in the form expected by the 1<sup>st</sup> appellant. The 1<sup>st</sup> appellant cannot, by reference to alleged irregular form in filing appeal, treat that no appeal is pending and create third party interest in respect of the subject matter of the writ petition.

We are in agreement with the directions issued in the order impugned in the appeal.

Writ appeal fails and is, accordingly, dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

**DILIP B. BHOSALE, ACJ**

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**S.V.BHATT, J**

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Date: 02.06.2015

*Stp/Lrkm*