

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT APEAL No. 361 OF 2015

03-06-2015

Between:

Greater Visakha Municipal Corporation, rep., by its Commissioner, Visakhapatnam –
530 002 and two others

... Appellants

And

Kalla Venkata Rao

... Respondent

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

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WRIT APEAL No. 361 OF 2015

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This writ appeal challenges the order dated 09-04-2015 passed on WPMP No.51421 of 2014 in Writ Petition No. 14416 of 2009. By this order, petition filed under Order XXVI Rule 9 of the Code of Civil Procedure, seeking appointment of an Advocate Commissioner afresh has been allowed.

The impugned order is assailed by the appellants on three grounds. Firstly, their counter was not taken into consideration by the learned single Judge; secondly, objections to the Commissioner's report were not filed by the sole respondent and thirdly, it was not proper on the part of the learned single Judge to appoint Advocate Commissioner afresh without setting aside the earlier report dated 25-03-2013. In our opinion, all the three grounds deserve to be rejected outright for the reasons recorded by the learned single Judge in the following paragraph:

“A perusal of the report submitted by the learned Advocate Commissioner, in clear and unequivocal terms, demonstrates that the Advocate Commissioner did not conduct the survey in accordance with the directions of this Court. Another significant aspect which needs to be mentioned at this juncture is that though this Court specifically asked the Advocate Commissioner to take the assistance of the Assistant Director, Survey and Land Records, Visakhapatnam, survey was conducted only with the help of Survey Inspector. The objections taken by the writ petitioner are reasonable and the learned Advocate Commissioner, in fact, ought to have conducted survey after considering the records, which he failed to do. In fact he ought to have asked the authorities to produce the same.”

In the concluding paragraph, learned Judge has also recorded categorically that the first Commissioner's report, for the reasons recorded in the aforesaid paragraph, is set aside.

Keeping that in view and considering over all facts and circumstances of the case, in our opinion, no case for interference in the writ appeal is made out.

The appeal is dismissed.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

03-06-2015

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