

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Appeal No.1399 of 2016

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal is preferred by the petitioners in W.P. No. 3413 of 2012 aggrieved by the order of the learned Single judge dated 22.11.2016. In the said writ petition, the petitioners had sought a mandamus to direct the respondent-Corporation to shift the members of the Nimnajathula Harijana Sangham, Indira Gandhi Colony and their families to the newly built flats at Bakkannapalem, if necessary, by seeking police aid for smooth shifting of the 76 families as per their request immediately in implementation of the order of this Court in W.P. No. 6586 of 2011 dated 29.9.2011.

W.P. No. 6586 of 2011 was filed by the Nimnajathula Harijana Sevasangham against the State of Andhra Pradesh, Greater Visakhapatnam Municipal Corporation and its officials. The appellants herein were not parties to the said writ petition. By the order in W.P. No. 6586 of 2011 dated 29.9.2011, the learned Single Judge recorded the submission of the learned Standing Counsel for the Greater Visakhapatnam Municipal Corporation ("GVMC" for short) that allotment of houses for 76 scheduled caste beneficiaries had been made under the JNNURM housing scheme at Bakkannapalem; the construction had already been completed; and the provision of certain amenities, such as electricity, drainage and roads in full shape, would be completed within a month's time to enable the said families to shift to the newly constructed flats. Recording the submission of the learned Standing Counsel that the provision of amenities would be completed, as undertaken in the counter affidavit, within a month's time to enable shifting of the allottees,

the learned Single Judge disposed of the writ petition directing respondent Nos. 2 and 3 to complete the works, in all respects, within one month; and intimate the same to the petitioner-society to enable its members to shift to the flats allotted to them.

It is the case of the appellants herein that these 76 families had encroached upon their plot of land; it was with a view to evict them that they were allotted houses for which the appellants had also contributed a sum in excess of Rs.15,42,800/- ie at Rs.20,300/- per affected family; it is only during the pendency of the present writ petition that these 76 families were allotted flats; and these facts were placed on record only by way of an additional counter affidavit filed in the year 2016.

In the order under appeal, the Learned Single Judge recorded that all the 76 families were allotted flats by proceedings dated 10.9.2014, and they are living peacefully in their allotted flats. The Writ Petition was dismissed holding that the writ petition filed by the appellants herein was for eviction of 76 families while the other Writ Petition ie W.P. No. 13680 of 2012 was filed by the Nimnajathula Harijana Seva Sangham, seeking rehabilitation; and, as houses had been allotted to these 76 families, no further orders need be passed in the Writ Petition.

In W.P. No. 3413 of 2012, against the Order in which the present appeal is preferred, neither the Nimnajathula Harijana Seva Sangham nor the 76 families who are said to have been allotted flats subsequently by the G.V.M.C, are arrayed as respondents. Sri P. Sri Raghu Ram, learned Senior Counsel, would submit that neither the Sangham nor the 76 families were arrayed as respondents in W.P.No.3413 of 2012 as the appellants-writ petitioners were, in fact, espousing the cause of these 76 families; their interests were similar; all of them wanted G.V.M.C. to allot flats to these 76 families; there was a clash of interests only after houses

were allotted to these 76 persons in September, 2014, which was brought to their notice by way of their additional counter affidavit filed in the year 2016; and in any event, at the time of adjudication of both the writ petitions, all the parties, including the appellants and the Nimnajathula Harijana Seva Sangham, were before this Court.

In so far as the allotment of flats to the 76 Scheduled Caste members and their families is concerned, it is evident from the order under appeal that all of them have been allotted flats, and they have been put in occupation thereof. We are not aware whether it is only these 76 persons who alone, despite their being allotted flats, continue to remain in occupation of the land which the appellants-writ petitioners claim to be the owners of, or whether there are some other encroachers who are in occupation of the subject lands. It is only if all those, who had encroached upon the subject land, were arrayed as parties to the Writ Petition, could this Court have examined the appellants-writ petitioners claim that they are encroachers, and to have considered whether the relief sought for in the Writ Petition could have been granted. The very fact that the relief sought for in W.P. No. 3413 of 2012, includes grant of police aid for shifting the 76 families, shows that, even at the time of institution of the said Writ Petition, the interests of the petitioners was in conflict with these 76 persons who were allotted flats by the GVMC. The relief sought for in the writ petition, in effect, is for eviction of these 76 persons and their families from the subject lands, if need be, with police aid. Such a relief could not, in any event, have been granted without those 76 persons, and others who are in occupation of the subject land, being arrayed as respondents in the Writ Petition even assuming that such a relief for eviction could have been

entertained in Writ Proceedings under Article 226 of the Constitution of India.

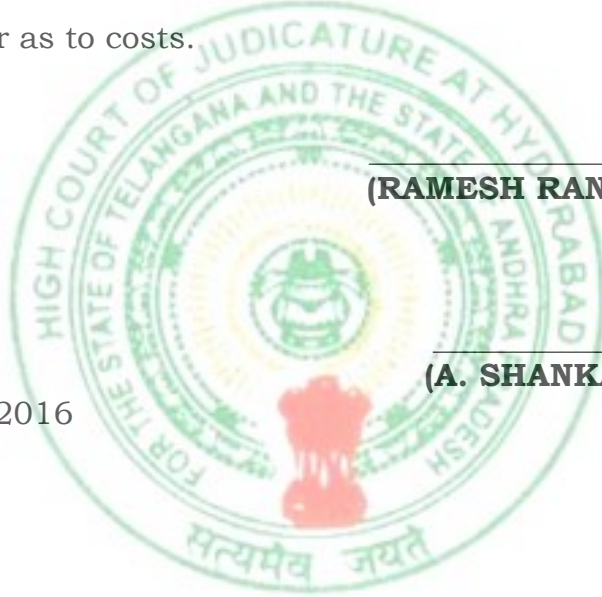
We find no error in the order of the learned Single Judge necessitating interference in an intra-Court appeal under Clause 15 of the Letters Patent. On the short ground that none of the alleged encroachers were arrayed as respondents either in the Writ Petition or in the Writ Appeal, the appellants herein are disentitled to the relief sought for in the Writ Petition.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

19th December, 2016
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