

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Appeal No.1409 of 2016

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.29291 of 2016 dated 30.08.2016. The appellants herein are the petitioners in the writ petition. The said writ petition was filed questioning the action of the respondents in trying to dispossess them from their plots, by demolishing them, in Survey No.54 of Madhurawada known as Bottavanipalem lay out which was allotted to them by the Social Welfare Department.

In the order under appeal, the Learned Single Judge, after noting the writ petitioners' contention that they had already filed a Civil Suit and had obtained injunction orders, held that the petitioners could not simultaneously pursue two remedies, one by way of a Civil Suit and the other by way of a Writ Petition. While dismissing the Writ Petition, the Learned Single Judge observed that the said order did not preclude the writ petitioners from enforcing their legal rights in the Civil Suit filed by them.

Sri K.Sarvabhuma Rao, learned counsel for the appellants, would submit that the Civil Suit filed by the appellant-writ petitioners was not against either the Government or the Greater Visakhapatnam Municipal Corporation (GVMC), but against certain individuals; consequently, the Learned Single Judge had erred in holding that the appellants had availed two remedies simultaneously; and the appellants were entitled, therefore, to prosecute the present writ petition, as they are in possession of the subject land.

When the matter came up yesterday, we directed both Sri K.Sarvabhuma Rao, learned counsel for the appellants, and Sri

S.Lakshminarayana Reddy, learned Standing Counsel for GVMC, to obtain instructions. Today, Sri S.Lakshminarayana Reddy, learned Standing Counsel for GVMC, would submit that the total extent of land, in various survey numbers for a which lay out was sanctioned by the Visakhapatnam Urban Development Authority (VUDA) is Acs.39.00; a small part thereof falls within Survey No.54; on the lay out being sanctioned by VUDA, plots were made and allotted to people from the economically weaker sections; only a part of Survey No.54, which did not form part of the earlier layout, is now being allotted by the Government to people affected by the Hudhud cyclone; while the entire lay out sanctioned by VUDA is now occupied by buildings, the plots, which the petitioners refer to, are non-existent; and by filing the present writ petition, the petitioners are seeking to grab land which the Government intends allotting to those who were affected by the Hudhud cyclone.

As the appellant-writ petitioners claim to have been assigned land, we asked Sri K.Sarvabhuma Rao whether assignment pattas were granted in favour of the appellants. While fairly stating that they were not, learned counsel would draw our attention to the identity cards issued by the Social Welfare Department. It would be difficult for us to hold, on the basis of some identity cards, that the appellant-writ petitioners have been assigned lands by the Government. Instead of examining all these issues in writ proceedings, under Article 226 of the Constitution of India, it would suffice to relegate the appellants to the remedy of a Civil Suit.

While the earlier suit, which the appellant-writ petitioners had filed, may well be against other individuals, that does not bar them from availing the common law remedy of a Civil Suit against the Government and the GVMC. Suffice it to make it clear that, in case the appellant-writ petitioners avail their common law remedy by filing a Civil Suit, the Civil Court shall examine their claim on its merits uninfluenced by any observations made either in this order or in the order under appeal.

Subject to the aforesaid observations, 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)

23rd December, 2016
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Date: 23.12.2016

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