

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A V SSHA SAI

WRIT APPEAL No. 78 OF 2016

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04.02.2016

Between:

Arya Prathinidhi Sabha Andhra Pradesh,
Rep. by its President Vithal Rao Arya,
Hyderabad.

... Appellant

And

The Commissioner,
Endowments Department,
Andhra Pradesh, Hyderabad, and others.

... Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE A V SSHA SAI

WRIT APPEAL No. 78 OF 2016

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

This writ appeal is directed against an interlocutory order dated 07.01.2016 passed by learned Single Judge pending hearing and final disposal of W.P.No.10215 of 2014.

In the writ petition, the appellant prayed for *mandamus* declaring the action of the first respondent in issuing proceedings dated 31.01.2014 and consequential proceedings issued by respondent Nos.2 and 3 dated 21.03.2014 granting "No Objection Certificate" in favour of respondent Nos.7 and 8 for installation of New MS/HSD Retail Out Let at Plot Nos.143, 144, 145 and 147 in Survey No.19 and Plot No.116 in Survey No.13 of Khanamet Village, Serilingampally Mandal, as illegal, arbitrary and in violation of the judgment of the Division Bench of this Court in Writ Petitions, as mentioned in prayer clause of the writ petition.

Initially, on 03.04.2014, learned Single Judge directed the parties to maintain *status quo* in all respects including possession, alienation, creation of third party rights, construction etc., until further orders.

Respondent No.7 filed W.V.M.P.No.2943 of 2014 for vacation of interim order dated 03.04.2014. That application has been disposed of by the order impugned in the instant writ appeal.

Before we proceed further, it would be relevant to reproduce the concluding paragraph of the impugned order, which reads thus:

“Accordingly, interim order dated 03.04.2014 in WPMP No.12838 of 2014 is modified in the following terms:

- (1) Within three months from today or from the date of commissioning of the retail outlet, whichever is earlier, respondent No.7 shall deposit at the rate of Rs.2 lakhs per month with respondent No.1.
- (2) Respondent No.1 shall keep the amount so deposited in Flexi Deposit in the name of Gurukul Ghatkesar Trust in any Nationalised Bank.
- (3) The amounts to be deposited by respondent No.7 shall await the result of the present Writ Petition or the case pending before the Supreme Court filed against the Judgment dated 12.09.2012 in W.P.Nos.20407/2008, W.P.Nos.9714 and 16658 of 2009, whichever is earlier.
- (4) In the event respondent No.7 is to vacate the land, he shall restore the same to its present level at his own expense and handover the possession of the same to the GGT without claiming any equity.
- (5) If respondent No.7 commits default in deposit of the amounts as directed above for two consecutive months, respondent No.1 is entitled to stop the operations of the retail outlet and in such an event, respondent No.7 is not entitled to resume operations till an appropriate order is passed by this Court.”

The appellant claim to be owner of about Ac.650.00 of land which on their own showing was alienated to several persons by the then President of the Trust. All these transactions took place in 1960 and thereafter. Several proceedings were thereafter initiated by the succeeding President and those proceedings are pending. We are not making detailed reference to all the facts since we are not inclined to admit the appeal and dismissing the same in limini.

Sri C.V. Mohan Reddy, learned Senior Counsel for the appellant, at the outset, invited our attention to Rule 144 read with Rules 150 and 152 of the Petroleum Rules, 2002 (for short ‘the Rules’) and submitted that since the properties are owned by the appellant, as held by the Division Bench of this Court, it was not open to the second

respondent to issue "No Objection Certificate" to respondent Nos.7 and 8 to install petroleum outlet.

It is pertinent to note that the contention urged by Sri C.V. Mohan Reddy before this Court was not urged before learned Single Judge at all. In other words, the contentions touching the provisions of the Rules were not urged at all before learned Single Judge and therefore, the order of learned Single Judge cannot be faulted on that ground. Even if it is assumed that such contention can be raised in appeal, we are not inclined to examine the same at this stage, in view of the order passed by learned Single Judge, protecting interest of the appellant in all respects. It is also pertinent to note and it is not in dispute that the appellant has not initiated any proceedings till today either seeking eviction of respondent No.7 from the property in their possession or seeking possession thereof. Respondent No.7 claims that he had purchased the property under a registered sale deed and that he is in physical possession of the same. His physical possession is not at all in dispute. It is also not in dispute that the entire property of Acs.650.00 is in occupation of hundreds of private persons over which constructions are made and they are in possession of the purchasers. In respect of several properties, regularisation orders are also passed and some applications are pending. Those applications now cannot be considered in view of the stay granted by the Supreme Court *vide* order dated 19.11.2013 in Special Leave to Appeal (CC) No.19015 of 2013. Insofar as respondent No.7 is concerned, it is not in dispute that regularisation order has been passed on 21.02.2009 under G.O.Ms.No.747 dated 18.06.2008. Whether that regularisation order is in accordance with law or not can be considered at the stage of hearing of the writ petition.

In the circumstances, we are not inclined to interfere with the order passed by learned Single Judge.

Hence, the appeal is dismissed.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

A V SESA SAI, J

Date: 04.02.2016
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