

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No. 1220 of 2008

Dt:30.06.2016

Between:

The Divisional Forest Officer and another.

... Appellants

And

Armugam and others.

... Respondents

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No. 1220 of 2008

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

This writ appeal is directed against the order, dated 30.03.2007 allowing W.P.No.8521 of 1998 filed by respondents herein, whereby they sought writ of mandamus declaring action of the first appellant in not implementing the order of second appellant, dated 28.05.1997 as illegal and further prayed for declaration that the action of first appellant in dispossessing respondents from the land in question as illegal, improper, arbitrary and contrary to law.

We have heard learned Government Pleader for the appellants. None appears for the respondents.

Though the writ appeal is shown in the category 'for orders', it was made clear to learned counsel for the parties that it would be heard for final disposal. We also would like to state that all old matters, such as this, we place them for orders and dispose of them finally. Knowing fully well that the matter is listed for hearing, the respondents chose to remain absent.

Briefly stated, the facts leading to these proceedings are as follows: the second appellant conducted an enquiry under Section 10 of the A.P. Forest Act and passed three awards in the proceedings Nos.A.84/64(A) dated 26.04.1974 and 84/64(B) dated 11.06.1974.

Against these awards passed by the second appellant, Divisional Forest Officer preferred appeals under Section 13 (2) of the Forest Act, bearing A.S.Nos.120, 121 and 122 of 1974 before the District Court. The District Court dismissed the appeals. The State filed writ petition questioning the award. This Court allowed the writ petition and remanded A.S.No.121 of 1974 to the District Court which, in turn, remitted the matter to the Forest Settlement Officer, Nellore for fresh enquiry and disposal. Pursuant thereto, the Forest Settlement Officer, Nellore again held an enquiry and passed an award in tune with the earlier award, dated 11.06.1974. In this backdrop, the writ petition was filed by respondents making grievance that despite the said order passed by the Forest Settlement Officer, the appellants, particularly the first appellant is not implementing the said award.

The appellants filed counter-affidavit stating that they have carried the order, dated 28.05.1997, passed by the Settlement Officer in appeal and the same is pending before the District Court. In this backdrop, learned Single Judge, without entering into the other questions raised by appellants, disposed of the writ petition with a cryptic order and made the following observations:

“A counter affidavit is filed, wherein almost all the facts are admitted, but it is stated that the Forest Settlement Officer, Nellore, has rejected the claim of the petitioner on 6.6.1976 on the ground that the lands claimed by the petitioners are situated outside the declared reserve forest, but again the very same Settlement Officer, Nellore, admitted the claim of the petitioners on the false documents prepared by the trainee officers. Further, it is stated that the Forest Settlement Officer having confirmed the order in proceedings No. 84/64-B dated 11.6.1974 condoned the delay in making the original claim. It is further stated that the matter again carried in appeal and the same is pending in the District Court. A reply affidavit is filed, wherein, it is categorically denied that no appeal is pending before the District Judge.

Heard.

When once the Forest Settlement Officer passed an award in favour of the petitioners, even if it is wrong, the bounden duty of the authority is either to implement the said award or to prefer an appeal. Though it is stated by the first respondent that an appeal is filed and the same is pending, as the same is denied, this court is unable to decide the said issue. However, if the said order passed

by the Forest Settlement Officer, second respondent herein dated 28.5.1997 has become final and no appeal is preferred, the first respondent herein is directed to implement the said award passed in R.C.No. A.84/64(B) dated 28.5.1997 and if there is any appeal is pending, the appeal may be pursued by both the parties.”

The order is hardly two and half pages, whereby about Acs.199.00 of forest land is directed to be given in possession to the respondents. The appellants have placed on record a declaration of Wild Life Sanctuary under Section 18 of Wild Life (Protection) Act, 1972 (for short ‘the Act’), which shows that the land, which is subject matter of these proceedings, is declared as forest. In this connection, our attention was invited to Section 19 of the Act which confers powers on the Collector to determine rights after holding an enquiry into, and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary.

Learned Government Pleader vehemently submitted that though all these contentions were urged and even the attention of learned Single Judge was invited to these proceedings, the writ petition came to be allowed on the ground no appeal was preferred. As a matter of fact, in the concluding paragraph, learned Judge has observed that “the bounden duty of the authority is either to implement the said order or to prefer an appeal”. Though it was specifically stated by the appellants that an appeal was filed and the same was pending, the learned Judge expressed his inability to decide the said issue. Thus, it is clear that even without verifying whether such appeal is filed or not, learned Judge has allowed the writ petition. Even before this Court, learned Government Pleader submitted that the appeal is pending.

Be that as it may, the question remained to be answered was whether the Forest Settlement Officer had jurisdiction to pass award in the face of the provisions of Section 19 of the Act, since now it is not in dispute that the land in question is within the limits of the sanctuary. In our opinion, the order of the Forest Settlement Officer

was without jurisdiction. In the circumstances, we have no option but to allow this appeal.

Order accordingly. As a consequence thereof, the order, dated 30.03.2007, passed in W.P.No.8521 of 1998 is set aside and the writ petition is dismissed. This, however, shall not preclude the appellants from adopting a remedy that may be available under the provisions of the Act.

Consequently, miscellaneous petitions, if any, also stand disposed of. There shall be no order as to costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO,J

Dt:30.06.2016

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