

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

Writ Appeal No.1403 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.32321 of 2016 dated 25.10.2016. The appellant-writ petitioner invoked the jurisdiction of this Court seeking a writ of mandamus to declare the inaction on the part of the Circle Inspector of Police (4th respondent herein), in failing to remove the fencing erected for the purpose of the police station over an extent of Ac.0.20 cents in Survey No.269-B of Animela Village, Y.S.R.District as arbitrary and illegal.

In the order under appeal, the learned Single Judge noted the appellant-writ petitioner's contention that the subject land, over which the 4th respondent had erected a fencing, belonged to him, and his land was occupied by respondents 3 and 4 without paying him any compensation. The Learned Single Judge also noted that earlier this Court, by its order in W.P.No.21577 of 2014, had disposed of the writ petition; on considering the rival submissions, he was of the view that this Court could not decide ownership; and, if the appellant-writ petitioner was aggrieved by any encroachment or occupation of his property by the authorities concerned, he was at liberty to approach the Civil Court or to give a representation to the authorities concerned for speedy remedy.

Earlier, when the appellant-writ petitioner invoked the jurisdiction of this Court by way of W.P.No.21577 of 2014, questioning the action of the respondents in constructing a compound wall, around the police station, over an extent of Ac.0.20 cents in the very same subject land, the learned Single Judge had issued notice before

admission. In his order, dated 04.09.2014 the Learned Single Judge had noted the instructions of the learned Government Pleader, received by him from the Sub-Inspector of Police, that the police station was constructed in a land of an extent of Ac.2.18 cents in Survey No.269-B of Animela Village, pursuant to a donation made by Sri G.Sekhar Reddy and five others, on 29.06.2002; the police station was constructed sometime during the year 2003, and it was functioning ever since then in the said premises; around the police station a wire fencing was erected for the purpose of preventing trespass by animals; and there was no compound wall constructed around the police station. The learned Single Judge had observed that, as the existing infrastructure reflected in the photographs made the position clear that there was no compound wall either constructed or attempted to be constructed, no order need be passed in the writ petition as it was laid on mere apprehension rather than based upon any reliable material.

In the present writ petition, the appellant-writ petitioner stated that the respondents had encroached upon his land; when they sought to raise a compound wall, he had filed W.P.No.21577 of 2014 which was disposed of on the basis of the instructions that a fencing had been erected, and no compound wall was constructed; he had, thereafter, issued a legal notice calling upon the 4th respondent to remove the fencing erected by him over the land owned and possessed by him; as he had never donated or alienated the land either in favour of the 4th respondent or in favour of the 3rd respondent, the question of the 4th respondent, occupying the land, did not arise; and the 4th respondent could not deprive him of his right over the property.

Sri V.R.Reddy Kovvuri, learned counsel for the appellant-writ petitioner, would submit that the State and its Officers cannot be permitted to encroach upon the land of private citizens; the appellant-

writ petitioner has specifically asserted that the subject land belonged to him; the learned single Judge ought to have invited a counter affidavit from the respondents; it is only if the respondents had disputed the appellant-writ petitioner's title, based on acceptable material, could this Court have come to the conclusion that there was a dispute regarding title; and, even without even a counter affidavit being filed, the learned Single Judge had erred in relegating the appellant-writ petitioner to the remedy of filing a Civil Suit. Learned counsel would submit that the documents placed by appellant on record, *prima facie*, show that he is the owner of the property.

As has been noted in the order under appeal, the appellant had himself filed W.P.No.21577 of 2014 earlier questioning the action of the respondents in constructing the compound wall around the police station in the land belonging to him. In the order, passed in W.P.No.21577 of 2014 dated 04.09.2014, the Learned Single Judge noted the submission of the learned Assistant Government Pleader, based on the instructions from the Sub-Inspector of Police, that the police station was constructed over an extent of Ac.2.18 cents in Survey No.269-B of Animela Village, pursuant to a donation made by Sri G. Sekhar Reddy and five others on 29.06.2002; the police station was constructed sometime during the year 2003; and around the police station a wire fencing was erected for the purpose of obstructing trespass of animals. The appellant has not filed any appeal against the order of the learned Single Judge in W.P.No.21577 of 2014 dated 04.09.2014, and the said order has attained finality. While the appellant-writ petitioner had claimed that the 4th respondent had constructed a compound wall around the police station, this Court had, in its order in W.P.No.21577 of 2014 dated 04.09.2014, held that a wire fencing had been erected around the police station, and not a

compound wall. It is only thereafter, and questioning the action of the respondents in erecting the very same wire fencing, has the appellant now filed a writ petition contending that he had issued a legal notice and has, thereafter, filed the present Writ Petition. Explanation IV to Section 11 C.P.C stipulates that any matter, which might and ought to have been made a ground of attack in a former Suit, shall be deemed to have been a matter directly and substantially in issue in the Suit, and constitutes *res judicata* in the subsequent Suit or proceedings. As the petitioner was entitled to question the wire fencing in the earlier writ petition, his failure to do so would disable him from raising a similar contention in a subsequent writ petition filed inter-parties. Construction of the compound wall was the subject matter of the writ petition earlier, and this Court had recorded the fact that it was only a wire fencing which was constructed, and not a compound wall. Even when he filed the earlier Writ Petition the petitioner could not have been unaware that the police station was bounded by a wire fencing, and not a compound wall. Any grievance, which the appellant had, against the order passed in W.P.No.21577 of 2014 dated 04.09.2014, could only have been agitated in an appeal preferred thereagainst; and not by filing another writ petition subsequently.

It is well settled that this Court, while exercising jurisdiction under Article 226 of the Constitution of India, would not decide disputed questions of title. This Court would, ordinarily, not enquire into the merits of the rival claims of title of the property in dispute as these are questions of fact and law which require determination by a competent Civil Court on the basis of the evidence adduced before it. **(Sohan Lal v. Union of India¹; New Satgram Engineering Works v. Union of India²; Parvatibai Subhanrao Nalawade (Smt) v. Anwarali**

¹ 1957 SCR 738

² (1980)4 SCC 570

Hasanali Makani³; Mohan Pandey v. Usha Rani Rajgaria (Smt.),⁴; State of Rajasthan v. Bhawani Singh⁵; Syed Kazim Bahadur v. District Collector, Rangareddy District⁶; Lambadi Pedda Bhadraru v. Mohd. Ali Hussain⁷; Union of India rep. by its Secretary, Ministry of Defence, New Delhi v. S.M. Hussain Rasheed⁸; Prince Shahamat Ali Khan v. Sultan-ul-Uloom Education Society⁹; Raidurg Co-operative House Building Society Limited, Raidurg v. Government of A.P.¹⁰).

Accepting the submission of Sri V.R.Reddy Kovvuri, learned counsel for the appellant-writ petitioner, would require this Court, whenever any person claims that his land has been encroached upon, to invariably entertain the writ petition, invite a counter affidavit from the respondents and only thereafter, if the respondents adduce sufficient evidence to show that there is a dispute regarding title, should it then examine whether or not the petitioner should be relegated to the remedy of a Civil Suit. Even on a bare reading of the order passed in W.P.No.21577 of 2014 dated 04.09.2014 it does appear that the respondents had claimed that the police station was constructed over an extent of Ac.2.18 cents of land in Survey No.269-B of Animela Village, pursuant to a donation made by Sri G.Sekhar Reddy and five others on 29.06.2002. The questions whether the respondent-officials had constructed the police station only over an extent of Ac.2.18 cents of land donated by Sri G.Sekhar Reddy, or whether they had encroached upon Ac.0.20 cents of land belonging to the petitioner, are all matters which can only be determined after evidence is adduced in a Suit filed before the Civil Court of competent jurisdiction. The Learned

³ (1992)1 SCC 414

⁴ (1992)4 SCC 61

⁵ 1993(Suppl)1 SCC 306

⁶ 2002 (3) ALT 739

⁷ 2003 (4) ALT 611

⁸ 2003 (5) ALT 143

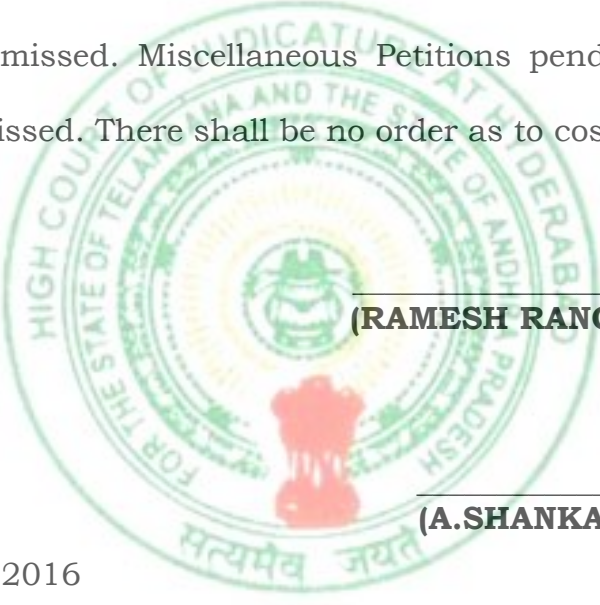
⁹ 2003 (6) ALT 307

¹⁰ 2004 (3) ALT 221

Single Judge has, in our view rightly, relegated the appellant-writ petitioner to the remedy of a Civil Suit.

In an intra-court appeal, under Clause 15 of the Letters Patent, interference by this Court would be justified only if the order of the Learned Single Judge suffers from a patent illegality. We are satisfied that the order of the Learned Single Judge does not suffer from any such infirmity. Suffice it to observe that, in case the appellant-writ petitioner avails the remedy of a Civil Suit, the Civil Court shall adjudicate their claim uninfluenced by any observations made in the order now passed by us, 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)

22nd December, 2016
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**



Writ Appeal No.1403 of 2016

Date: 22.12.2016