

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Appeal No.891 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 Writ Petition No. 25814 of 2016, dated 9.8.2016.

The appellant herein is the petitioner in the said writ petition. He invoked the jurisdiction of this Court seeking a direction to the respondents not to dispossess him from the land of an extent of Acs. 0.98 cents in R.S. No. 397/2 in Gudur Village and Mandal, Krishna District. It was the case of the appellant herein, before the learned Single Judge, that even an encroacher cannot be evicted from the land in his possession without following the procedure prescribed under Section 54 of the Wakf Act, 1995 (for short 'the Act'); the respondents ought to have followed the said procedure; they ought to have approached the Tribunal seeking eviction of the appellant; in the light of the several judgments which were cited before the learned Single Judge wherein this Court has held that no encroacher can be evicted from the subject land without following the procedure prescribed under the Act, the learned Single Judge had erred in relegating the appellant to the remedy of approaching the Tribunal when, in fact, it was for the respondents to approach the Tribunal, and seek the appellant's eviction.

In an intra-court appeal under Clause 15 of the Letters Patent, interference with the order of the learned Single Judge is called for only when the order suffers from a patent illegality. While expressing his concurrence with the proposition of law put forth on behalf of the appellant, the learned Single Judge held that, since the appellant has an effective alternative remedy before the Wakf Tribunal constituted under the Act, he ought to have invoked such a remedy, and he ought not to

have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

When we asked Mr. V.V.L.N. Sarma, learned counsel for the appellant, whether or not the appellant has a remedy under the Act against violation of the provisions of the Act by the respondents herein, learned counsel would insist that it is for the respondents to approach the Tribunal, and not the appellant herein.

Section 83 of the Act enables the Tribunal to determine any dispute, including eviction of a tenant and permits its jurisdiction to be invoked by any person aggrieved by an order made under the Act. It is, evident, therefore, that the appellant herein has a statutory remedy under Section 83 of the Act, in case he is aggrieved by any action of the respondents, including any statutory violation on their part. The order of the learned Single Judge does not suffer from any patent illegality necessitating interference under Clause 15 of the Letters Patent.

Sri V.V.L.N. Sarma, learned counsel for the appellant, would request this Court to pass an interim order till the appellant invokes the jurisdiction of the Tribunal. In the order under appeal, the learned Single Judge has refused to entertain the writ petition, and has relegated the appellant to the remedy of approaching the Tribunal. As the writ petition itself has not been entertained, it would not be proper for us to grant the appellant any interim relief till he approaches the Tribunal. In terms of the order of the learned Single Judge, it is open to the appellant herein to approach the Wakf Tribunal questioning the alleged illegal action of the respondents in evicting him from the subject land. We however see no reason to interfere with the order of the learned Single Judge.

The writ appeal fails and is, accordingly, dismissed. Needless to state that, on its jurisdiction being invoked, the Tribunal shall consider the appellant's application on its merits, uninfluenced either by the

observations made by the learned Single Judge in the order under appeal, or in the order now passed by us.

Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

22nd September 2016

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Date: 22.09.2016

