

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL No.1775 OF 2005

JUDGMENT: (Per 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.20315 of 2005 dated 15.09.2005 dismissing the Writ Petition relegating the petitioner to the remedy of a Civil Suit.

W.P. No.20315 of 2015 of 2015 was filed by the appellant herein seeking a direction from this Court to declare the action of the respondent - Sri Venugopala Swamy Devasthanam in proposing to auction the leasehold rights of the land in Survey Nos.68, 69 and 70, admeasuring Acs.17.36 guntas, situated in Balapur Village, Saroornagar Mandal, Ranga Reddy District, which the petitioner claimed was his joint family property.

In the order under appeal, the learned Single Judge noted the submissions, urged on behalf of the petitioner, that, by virtue of the proceedings of the Revenue Divisional Officer, Ranga Reddy East Division, dated 21.10.1993, occupancy rights in respect of the lands in question had been given to the petitioner's joint family; therefore, it had become final; there could not be any other claim in respect of these lands; and hence the writ petition should be allowed. Thereafter, the learned Single Judge noted that the respondent - Devasthanam had issued an auction notification, in respect of the lands in question, stating that these lands belonged to the respondent - Devasthanam; the issue, with regard to title of

the property, had to be decided by the competent Civil Court; disputed questions of fact, more so, regarding title of the properties, could not be decided by this Court; and the writ petition was devoid of merits, and was liable to be dismissed.

Aggrieved thereby, the petitioner has preferred this *intra* Court appeal under Clause 15 of the Letters Patent and, by the order in W.A.M.P. No.3321 of 2005 dated 29.09.2005, interim stay as prayed for was granted. The interim prayer sought for, by the appellant, was to grant stay of the auction proposed to be conducted on 30.09.2005. As the interim order continues to remain in force ever since, for the past more than eleven (11) years, the respondent - Devasthanam has been disabled thereby from conducting auction of the subject property.

Sri M.V. Durga Prasad, learned counsel for the appellant – writ petitioner, would submit that, in view of the interim order passed by the Division Bench, no auction was held on 30.09.2005; since the subject lands are patta lands, of which the petitioner is the owner of, the respondent - Devasthanam lacks jurisdiction to conduct an auction; the respondent - Devasthanam has not even filed a counter-affidavit asserting that the subject properties belong to them; they were, therefore, not entitled to conduct an auction; the petitioner's right, under Article 300-A of the Constitution of India, has been violated thereby; and the learned Single Judge had erred in relegating the petitioner to the remedy of filing a civil suit, even without a counter affidavit being filed by the respondent-

Devasthanam. Learned counsel would rely on the judgment of the Supreme Court, in **State of U.P. v. Manohar**¹, in this regard.

Article 300-A of the Constitution, no doubt, disables the State or its instrumentalities from depriving any person of his property except in accordance with law. If, as is contended on his behalf, the petitioner is the owner of the subject property, then the respondent - Devasthanam was disentitled from putting the subject property to auction, except on its acquisition in accordance with law. The moot question, however, is whether the petitioner, or the respondent-Devasthanam, is the owner of the subject property?

The learned Single Judge has merely observed that disputed questions of title would, ordinarily, not be examined in the proceedings under Article 226 of the Constitution of India. It is well settled that disputed questions of title are not, normally, examined in proceedings under Article 226 of the Constitution of India. (**Sohan Lai v. Union of India**²; **New Satgram Engineering Works v. Union of India**³; **Parvatibai Subhanrao Nalawade (Smt) v. Anwarali Hasanali Makani**⁴; **Mohan Pandey v. Usha Rani Rajgaria (Smt)**⁵; **State of Rajasthan v. Bhawani Singh**⁶; **Union of India v. Mohammed Mohiuddin**⁷; **Syed Kazim Bahadur v. District Collector**⁸; **Lambadi Pedda Bhadr v. Mohd. Ali Hussain**⁹; **Union of India, Secretary, Ministry of Defence, New Delhi v. S.M. Hussain Rasheed**¹⁰; and **Prince Shahamat Ali Khan v. Sultan-ul-Uloom**

¹ (2005) 2 SCC 126

² 1957 SCR 738

³ (1980) 4 SCC 570

⁴ (1992) 1 SCC 414

⁵ (1992) 4 SCC 61

⁶ 1993 (Suppl) 1 SCC 306

⁷ (2000) 6 ALD 376 (APHC DB)

⁸ 2002(3) ALD 507 (APHC DB)

⁹ 2003(4) ALD 673 (APHC DB)

¹⁰ 2003 (5) ALD 150 (APHC DB)

Education Society¹¹). Such questions can only be determined on the basis of the evidence adduced, both oral and documentary.

10. In **Manohar**¹, the appeal to the Supreme Court was preferred by the State Government, against the order passed by the Allahabad High Court whose jurisdiction was invoked by the writ petitioner therein seeking compensation in respect of his land, which he claimed was taken away forcibly without following the due process of law. The State Government appeared, through the Counsel, before the Allahabad High Court and produced certain records. After perusing the record, the Allahabad High Court came to the conclusion that the case made out by the writ petitioner was acceptable, and that the State should be directed to take steps to pay compensation to the petitioner within a period of three (3) months, with appropriate interest, in accordance with law. It is in this context, and on its jurisdiction being invoked by the State Government, that the Supreme Court observed that the State Government was unable to produce even a scrap of paper indicating that the land of the respondent - writ petitioner had been taken over or acquired in any manner known to law, or that he had ever been paid any compensation in respect of such acquisition; it was also not denied that the land was thereafter constructed upon; although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution; there was an utter lack of legal authority for deprivation of the respondent - writ petitioner's property by the State authorities; and this was an eminently fit case for exercising the writ jurisdiction of the High Court under

¹¹ 2003 (6) ALD 453 (APHC DB)

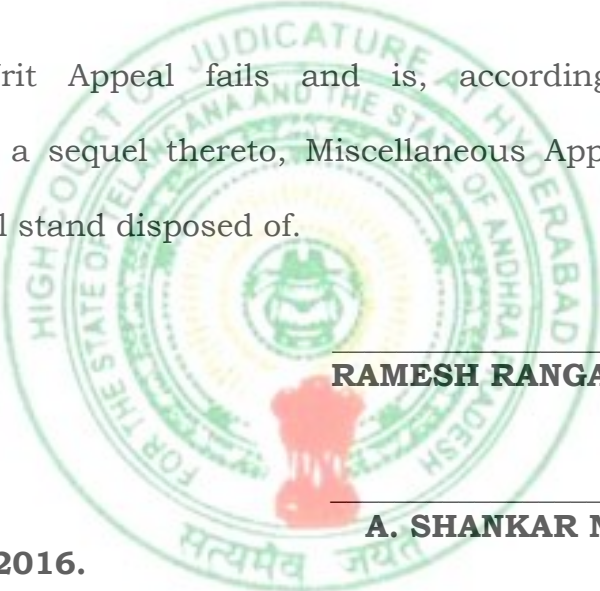
Article 226 of the Constitution. The Supreme Court expressed its reservation regarding the failure of the High Court to impose exemplary costs on the State Government.

In **Manohar**¹, there was no dispute regarding the petitioner's title over the property which the State Government had taken possession of. In the present case, however, the respondent-Devasthanam had sought to auction the subject property on the ground that the property belonged to them. In the Writ Petition, the learned Single Judge has merely refrained from exercising his jurisdiction under Article 226 of the Constitution, and has, instead, relegated the petitioner to the remedy of a civil suit holding that questions of title are better adjudicated in a civil suit. While this Court is not disabled from entertaining writ petitions where the State Government or its instrumentalities are alleged to have violated the constitutional right of individuals under Article 300-A of the Constitution, it has undoubtedly also the discretion not to entertain a writ petition, and to relegate the petitioner to avail the other remedies available to them in law.

The mere fact that the petitioner has been relegated to the remedy of a civil suit does not mean that this Court has held that the property does not belong to him, or that this Court has held that the subject property belongs to the respondent - Devasthanam. All that the learned Single Judge has held is that these disputed questions of title are more appropriately examined in a civil suit. 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 where the order under appeal is patently

illegal. The order of the learned Single Judge, relegating the petitioner to the remedy of a civil suit, is not one such. In any event, since the auction scheduled to be held on 30.09.2005 was admittedly not held, any action, which the Devasthanam can now take to auction the subject property, can only be after it issues a notification afresh. It is always open to the appellant herein, if they so choose, to approach the Civil Court in the meanwhile. We, however, see no reason to interfere with the exercise of discretion, by the learned Single Judge, to relegate the appellant-writ petitioner to the remedy of a civil suit.

The Writ Appeal fails and is, accordingly, dismissed. No costs. As a sequel thereto, Miscellaneous Application, if any pending, shall stand disposed of.



RAMESH RANGANATHAN, ACJ

A. SHANKAR NARAYANA, J

October 20, 2016.

PV/Mgr