

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.35989 OF 2016

ORDER:

This Writ Petition under Article 226 of the Constitution of India has been preferred by the petitioner for issuance of a Writ of Certiorari calling for the records pertaining to the order dated 04.10.2016 passed in C.C.No.2564/AND/75 by the 3rd respondent and to quash the same declaring it as illegal and arbitrary.

Heard the learned counsel for the petitioners, the learned Assistant Government Pleader for Revenue (AP) for respondent Nos.1 to 4 and Sri K.Sita Ram, learned counsel appearing for the 5th respondent. With their consent, the writ petition is disposed of at the stage of admission itself.

A perusal of the material placed before this Court would show that earlier the petitioner herein filed W.P.No.2383 of 2004 seeking issuance of a Writ of mandamus to declare the action of the respondents therein in contemplating to issue pattas to SCs and BCs with respect to the petitioner's land to an extent of Acs.05-90 cents situated in survey No.88/1 of T.Somalagudur Village of Nandavaram Mandal, Kurnool District, as illegal and improper. By an order dated 10.10.2014, this Court allowed the writ petition observing that the respondents are at liberty to proceed against the original declarant for taking over the surplus land by following due process of law. Since the 5th respondent was not a party to said writ petition, she filed W.A.No.561 of 2015. By order dated 07.07.2015, a Division Bench of this Court disposed of the Writ Appeal holding as under:

“If the respondents initiate any proceedings against the appellant (original declarant) for taking over her surplus land, it is open for the appellant to contest the said proceedings on all grounds that may be available to her. In any case, the respondents will have to follow due process of law as observed in the impugned order and no order shall be passed without granting an opportunity of being heard to the appellant. Since the appellant was not party to the writ petition, the concerned authority shall decide the issue of surplus land on merits in accordance with law, without being influenced by the observations made in the impugned order. It is open to the appellant to produce all materials that she desires to rely upon to prove her claim before the concerned authority. All contentions of the appellant on merits are kept open. It is also made clear that if necessary, the concerned authority may issue notice to the original petitioner i.e. Boya Sanjanna S/o.Boya Chinna Hanumanna.”

Pursuant to the order passed by the Division Bench of this Court, proceedings in CC No.2564/AND/75 dated 04.10.2016 came to be issued after hearing both the parties. Operative portion of the order dated 04.10.2016 reads as under:

“For the above reasons and after going through the records available in offence I am of the opinion that Boya Sanjanna and his family members have not proved that Sy.No.88/1 to extent of Ac.5.90 cents situated within the limits of T.Somalagudur Village was conclusion that Sy.No.88/1 to extent of Ac.5.90 cents was surplus land and the same was surrendered and approved by the authorities and also paid compensation to the Late Ramalinga Reddy, for the entitled for Sy.No.88/1 to an extent of Ac.5.90 cents and the Land in Sy.No.88/1 is belongs to the declarant Ramalinga Reddy, as such the surplus land which was surrendered by the Late.Ramalinga Reddy is in

Sy.No.88/1 to an extent of Ac.5.90 cents and not other land. Hence if any manner Boya Sanjanna and his brother Boya Yerranna are in Possession of Sy.No.88/1 to an extent of Ac.5.90 cents that has to be taken back and to deliver possession to the beneficiaries. Hence, this order.”

Challenging the same, present Writ Petition came to be filed.

Learned counsel for the petitioner would submit that from the contents of the judgment of the Division Bench passed in Writ Appeal, the findings of the learned Single Judge of this Court were not set aside in Writ Appeal. It is urged that the impugned order came to be passed without application of mind and in a vague manner. It is his case that the impugned order came to be passed on 04.10.2016 and the petitioner came to know about the same on 17.10.2016 and hence pleads interference.

Learned counsel for the respondents strongly opposes the same contending that the impugned order is in accordance with the order passed in writ appeal filed against the order of the learned Single Judge. Since an alternative remedy of appeal under The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, (for short ‘the Act’) is available, the petitioner herein ought to have availed the said remedy under the Act instead of approaching this Court invoking Article 226 of Constitution of India as number of factual aspects are involved in the matter.

It is to be noted that the order of the leaned Single Judge passed in a writ petition was challenged by way of a writ appeal which was allowed directing the respondents to initiate

proceedings against the appellant (original declarant) for taking over surplus land, keeping it open for the appellant to contest the said proceedings on all grounds that may be available to her. It was further held that since the appellant was not a party to the writ petition, the concerned authority was directed to decide the issue of surplus land on merits in accordance with law.

That being the position, the argument advanced by the learned counsel for the petitioner that the findings of the learned Single Judge in the Writ Petition were not set aside by the Division Bench in the Writ Appeal and the same holds the field cannot be accepted. That apart, since the issues raised in the Writ Petition involves number of factual aspects, it may not be proper for this Court to go into those issues while adjudicating a Writ Petition under Article 226 of the Constitution of India. It would be appropriate for the petitioner to avail the alternative remedy available to him under the Act.

Hence, the Writ Petition is disposed of directing the petitioner to avail the alternative remedy of appeal provided under Section 20 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, along with an application for stay, within a period of two weeks, in which event, the same shall be considered by the authorities concerned as early as possible preferably within a period of two weeks therefrom. *Status quo* as on today shall be maintained with regard to possession till such time.

Miscellaneous petitions pending in this writ petition, if any,
shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

Date: 25.10.2016
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