

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI

Writ Appeal No.721 of 2017

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.7279 of 2017, which formed part of a batch of writ petitions in W.P.No.6976 of 2017 and batch dated 19.04.2017.

On the 1st respondent herein initiating proceedings against her, under Section 5(1) of the Public Premises (eviction of unauthorised occupants) Act, 1971 (for short "the Act"), the appellant-writ petitioner had invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, seeking a writ of mandamus to quash the proceedings of the Additional Divisional Railway Manager dated 27.01.2017.

In the order under appeal, the Learned Single Judge noted that earlier a show cause notice was issued in June, 2016 calling upon the appellant to submit a reply and attend the enquiry; she neither submitted a reply nor did she furnish copies of the documents; she did not also attend the personal enquiry; when the jurisdiction of this Court was invoked, an order was passed on 06.03.2017 giving liberty to the respondents to conduct a survey in the presence of the appellant; a survey report was filed before the Court which was again disputed on the ground that the survey was not properly conducted; this involved verification and, since there was a provision for appeal, liberty was given to the appellant to file an appeal to the competent authority within 30 days from the date of the order; and the respondents were directed not to take any steps for eviction of the appellant for a period of 45 days from the date of the order. The Learned Single Judge made it

clear that, in case no appeal was filed within the specified period, it was open to the respondents to take appropriate action in accordance with law.

Sri T.V.Kalyan Singh, learned counsel for the appellant, would place reliance on the judgment of the Supreme Court in ***Govt. of A.P. vs. Thummala Krishna Rao***¹ and the judgments of this Court in ***Smt. Roshan Minoo Patel vs. Union of India***² and ***Podduturi Vasantha Reddy vs. Estate Officer, Airports Authority of India, NAD, Hyderabad***³ to contend that, where serious disputed questions of fact arise for consideration, the summary procedure under the Act cannot be resorted to; and the remedy available to the respondent-railways is only to file a suit for eviction of the appellant from the subject property.

It is not in dispute that the remedy of an appeal is provided under the Act. The contention urged before us, by Sri T.V.Kalyan Singh, learned counsel for the appellant, is that, in the light of the aforesaid judgments, the appellant cannot be directed to avail the appellate remedy. The question whether the original authority lacks jurisdiction under the Act, to pass the impugned order, can also be urged before the appellate authority. While it is no doubt true that mere existence of an alternative appellate remedy does not bar exercise of jurisdiction under Article 226 of the Constitution of India, the Learned Single Judge has exercised discretion to relegate the appellant to the remedy of a statutory appeal.

As exercise of jurisdiction, under Article 226 of the Constitution of India, is discretionary, the High Court could have either entertained the writ petition or relegated the petitioner to the alternative remedy of an appeal. The order of the Learned Single Judge cannot, therefore, be

¹ AIR 1982 SUPREME COURT 1081

² 2011 (5) ALD 626

³ AIR 2010 ANDHRA PRADESH 46

said to suffer from a patent illegality necessitating intervention in an intra-court appeal under Clause 15 of the Letters Patent. Ordinarily the jurisdiction of this Court, under Clause 15 of the Letters Patent, can be invoked only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal. The Writ Appeal fails and is, accordingly, dismissed.

Sri T.V.Kalyan Singh, learned counsel for the appellant, would submit that the time, specified by the Learned Single Judge to prefer an appeal, expired on 04.06.2017. When we asked Smt. Sasikala, learned Standing Counsel for the Railways, she fairly stated that the time limit, specified by the Learned Single Judge, could be extended by another month till 04.07.2017, the appellate authority could be directed to entertain the appeal, and the Railways would not take coercive steps to remove the encroachments till 20.07.2017.

In the light of the submission of the Learned Standing Counsel, we consider it appropriate to permit the appellant to avail the statutory remedy of appeal on or before 04.07.2017. All questions, including regarding the jurisdiction of the original authority to pass the order of eviction under the Act, can be raised before the appellate authority who shall examine the same on its merits uninfluenced either by the observations in the order under appeal or in the order now passed by us. As fairly stated by the learned Standing Counsel, no coercive steps shall be taken by the respondents to evict the appellant from the subject lands till 20.07.2017. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

14th June, 2017
JSU

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