

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.151 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letter Patent, is preferred against the order passed by the learned Single Judge in WP.No.44484 of 2016 dated 21.12.2016.

The appellants herein are the petitioners in the Writ Petition. They filed the Writ Petition to declare the action of the Commissioner, Kadiri Municipality, in allotting the petitioners' lands to the fourth respondent without notice and without causing an enquiry as arbitrary and illegal. The learned Single Judge has, in the order under appeal, noted the appellants-writ petitioners claim that the subject land is private land, and does not belong to the third respondent-Municipality; and, therefore, the Municipality ought not to have allotted the subject land for construction of a Minority Boys Hostel without following the due process of law. The Learned Single Judge has also noted the submission, made on behalf of the learned Standing Counsel for the third respondent, that the subject land belongs to the Municipality; the Municipality has allotted the same for construction of a Minority Boys Hostel; and resolutions were passed by the third respondent-Municipality on 30.10.2015 allotting an extent of Ac.0.50 cents of land in Survey Nos.394/A and 397 for construction of a Minority Boys Hostel. Thereafter, the Learned Single Judge observed that it was clear that the Municipality was claiming that the subject land belonged to them; and, as the petitioners were also claiming that

the subject lands belonged to them and their vendors had valid title which was passed on to them, there were rival claims to the property; as to who was the actual owner of the subject land was a disputed question of fact which could be adjudicated availing the common law remedy; in exercise of the powers of the judicial review, under Article 226 of the Constitution of India, this Court would not hold or decide ownership of the subject land when there were two rival claims; and, if the petitioners claimed that the subject land belonged to them and there was illegal interference thereto by the third respondent, they were entitled to avail the common law remedy available to them.

Sri Allam Ramesh, learned counsel for the appellants, would contend that, once the appellants were able to *prima facie* establish ownership of the land, they ought not to have been relegated to the remedy of a civil suit; and, in any event, as the appellants are in possession of the subject land, they could only have been evicted therefrom in accordance with law, after putting them on notice and after giving them an opportunity of being heard.

The questions whether the petitioners are in possession of the subject land or whether the land is in occupation of the third and the fourth respondents are again matters which are required to be examined on the basis of the evidence placed on record before the Court. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference by this Court would be justified only if the order under appeal suffers from a patent illegality. The Learned Single Judge has, by the order under appeal, relegated the petitioner to avail the remedy of a civil suit and establish their claim of having title over the subject land. The question of

possession can also be adjudicated on the appellants-writ petitioners availing the remedy of a Civil Suit. We find no error in the order of the learned Single Judge, much less a patent illegality necessitating our interference under Clause 15 of the Letters Patent.

The Writ Appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

6th February 2017
RRB

