

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

WRIT APPEAL No.963 of 2017

JUDGMENT: (Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in WP.No.41438 of 2016 dated 29.06.2017. The appellant herein is the petitioner in the writ petition. He invoked the jurisdiction of this Court seeking a Mandamus to declare the proceedings of the Sub-Collector, Rajamahendravaram dated 19.11.2016, served on him on 26.11.2016, as illegal, arbitrary, without jurisdiction and contrary to the provisions of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (hereinafter called as '1981 Act') and the Rules made thereunder. He sought a consequential direction to the respondents not to interfere with his rights over the land in Sy.No.416/2B2A and 416/2B2B total admeasuring Ac.15.53 cents situated at Rajamahendravaram Village and Urban Mandal, East Godavari District.

The order, impugned in the writ petition, dated 19.11.2016 was passed by the third respondent (Sub-Collector) setting aside the entry in the record of rights whereby the appellant-writ petitioner's name was recorded as the pattadar. It was agreed by all the counsel, appearing on behalf of the parties before the learned Single Judge, that the Sub-Collector lacked jurisdiction to pass the impugned order. The learned Single Judge, in our opinion rightly so, set aside the order, impugned in the Writ Petition, as without jurisdiction. Having noted that the District Collector had the power of revision, under Section 9 of the 1971 Act, the learned Single Judge has, in our opinion rightly, granted the unofficial respondents liberty to avail the remedy under Section 9 of the 1971 Act.

What is however put in issue before us, by Sri C. Ramachandra Raju, learned counsel for the appellant, is the latter part of the order where the learned Single Judge had observed that, keeping in view the circumstances on which both sides had argued with vehemence and after taking note of the stage at which disputes had arisen between the parties, in exercise of the discretion and jurisdiction of this Court under Article 226 of the Constitution of India, he was directing that the entries in 1-B register, or in the pass books, were not to be utilised by any person till the revision was heard and disposed of. The second respondent was directed to dispose of the revision within four months from the date of the order. The learned Single Judge made it clear that the direction, in the order under appeal, should not be understood as the Court expressing a view after taking note of merits; and the directions were issued to ensure that, basing on the entries so made which were the subject matter of serious contest before the revisional authority, no person was allowed to use or misuse the same.

What was put in issue before the learned Single Judge was the order passed by the Sub-Collector cancelling the entries, in the record of rights, which earlier stood in the name of the appellant-writ petitioner. Having held that the Sub-Collector lacked jurisdiction, and having set aside the impugned order, the learned Single Judge was not justified in directing the parties not to utilise the entries in 1-B register or the pass books till the revision was heard and disposed of by the second respondent.

While Sri D.V. Seetharama Murthy, learned Senior Counsel, appearing on behalf of respondent No.7, would submit that the order under appeal is a consent order in its entirety, a bare reading of the said order would show otherwise. The parties appear only to have given their consent regarding the lack of jurisdiction of the Sub-Collector to

pass the order impugned in the Writ Petition, and nothing more. The direction issued to the parties by the Learned Single Judge, not to utilise the entries, is not based on their consent. The order under appeal does not also reflect the said direction being issued on the consent of parties. While both Sri D.V. Seetharama Murthy, learned Senior Counsel appearing on behalf of respondent No.7, and the learned Government Pleader for Revenue, would submit that the directions issued by the learned Single Judge is justified, as the entries in the revenue records were fraudulently made, such a direction, to the parties not to utilise the entries in the record of rights, could only have been issued on a finding being recorded that the entries in the revenue records are vitiated by fraud. No such finding has been recorded in the order in appeal. The direction to the parties, not to utilise the entries in the revenue records, in our view, suffers from a patent error necessitating its being set aside in proceedings under Clause 15 of the Letters Patent. The order of the learned Single Judge, to the limited extent he directed the parties not to utilise the entries in the revenue record till the revision was disposed of by the second respondent, is set aside. We make it clear that we have not interfered with any other part of the order of the learned Single Judge.

The writ appeal is disposed of accordingly. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, HACJ

T. RAJANI, J

July 24, 2017
DSK