

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.1334 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. 19386 of 2016 dated 20.7.2017. The appellant herein is the petitioner in the writ petition wherein he sought a mandamus to declare the order of the Special Deputy Collector, Adilabad, in directing the Tahsildar to decide the application filed by the 5th respondent under Section 3 of the Andhra Pradesh Scheduled Area Land Transfer Regulations, 1959 (hereinafter referred to as "the Land Transfer Regulations"), as arbitrary and illegal.

The case appears to have had a chequered history with the 5th respondent having filed a suit against the appellant herein. The 5th respondent filed O.S. No. 4 of 2009 before the Principal Junior Civil Judge, Mancherial to declare his title over the suit schedule land, and for recovery of possession. The 5th respondent claimed that they were absolute owners of the suit schedule property having acquired it from the original protected tenant; and they were therefore entitled for declaration of their title. The said Suit appears to have been dismissed for non-prosecution. Thereafter the 5th respondent invoked the jurisdiction of the Special Deputy Collector, under Section 3 of the Land Transfer Regulations, contending that it is he who should hear the matter in view of the provisions of the Land Transfer Regulations, and not transfer the matter to the Revenue Divisional Officer, Mancherial. A copy of the said letter was also marked to the District Collector,

Adilabad who, by his endorsement of the same date, directed the 2nd respondent to hear the matter. Aggrieved thereby, the appellant herein filed W.P.No.19386 of 2016.

The contention urged, before the learned Single Judge, was firstly that the Special Deputy Collector had no power to review his own order and, as such, the 5th respondent could not have made an application before him; there is no provision in the Land Transfer Regulations for a representation to be submitted to the District Collector, who is the appellate authority under the Land Transfer Regulations; and, even if the said representation is treated as an appeal, the District Collector ought to have put the appellant on notice, and should have given him an opportunity of being heard, before remanding the matter to the Special Deputy Collector.

When we asked Sri Chandraiah Sunkara, learned counsel for the 5th respondent, whether the 5th respondent was present before the Special Deputy Collector when he made the endorsement dated 26.3.2016, (transferring the matter to the Revenue Divisional Officer, Mancherial on the ground that the provisions of the Land Encroachment and Tenancy Acts were involved), learned counsel would fairly state that the endorsement dated 26.03.2016 was made in the presence of the 5th respondent. Both he and the learned Government Pleader for Revenue would however contend that the said endorsement cannot be treated as an order, as it does not assign reasons for transferring the application, filed under the Land Transfer Regulations, to the Revenue Divisional Officer, Mancherial who is the competent authority under the Land Encroachment Act and the Tenancy Acts.

While this submission urged on behalf of the respondents, that the endorsement cannot be treated as an order, has considerable force, the fact remains that the learned Single Judge has, in the order under appeal, observed that, even if the endorsement is to be treated as an order, it can be rectified by the appellate authority who is the District Collector; and he can direct the appropriate authority to proceed with the matter since the property is in an agency area.

It would be wholly inappropriate for us, in an appeal preferred by the appellant-writ petitioner, to examine whether or not the learned Single Judge was justified in proceeding on the premise that the endorsement was an order. If we were also to proceed on the premise that the said endorsement is an order, then the 5th respondent, no doubt, had a right of appeal, thereagainst, to the District Collector.

While Sri N. Subbarao, learned counsel for the appellant, would submit that the said letter dated 26.3.2016 is merely a letter and not an appeal, in the absence of any format being prescribed in this regard, we see no reason why the said letter cannot be treated as an appeal by the District Collector. The fact, however, remains that the endorsement of the District Collector, directing the Revenue Divisional Officer to hear the matter, was passed without either putting the appellant on notice, and without giving him an opportunity of being heard. The endorsement of the District Collector, acting as the appellate authority, is therefore in violation of principles of natural justice, and is set aside.

The District Collector, Adilabad shall, at the earliest and in any event not later than one month from the date of receipt of a

copy of this order, treat the 5th respondent's letter dated 26.3.2016 as an appeal, and pass orders thereupon in accordance with law, after putting the appellant-writ petitioner and the fifth respondent on notice, and after giving them an opportunity of being heard.

It is made clear that we have neither expressed any opinion on merits nor on the question whether the 2nd respondent was entitled to transfer the matter to the Revenue Divisional Officer, Mancherial. Suffice it to direct the District Collector to pass an order afresh in accordance with law uninfluenced by the observations made either in the order under appeal or in the order now passed by us.

The order under appeal is set aside to the extent indicate hereinabove, and the Writ Appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

15th September, 2017
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Date: 15.9.2017

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