

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.736 of 2017

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

This appeal, under Clause 15 of the Letters Patent, is filed against the proceedings in W.P.No.12780 of 2017 dated 11.04.2017. Heard Sri Avinash Desai, learned counsel for the appellant-writ petitioner, the learned Government Pleader for Mines and Geology and Sri K.Raghuveer Reddy, learned counsel for the 5th respondent. The appellant herein is the petitioner in W.P.No.12780 of 2017 wherein he sought a mandamus to declare the action of the respondents, in passing the order dated 23.08.2016 rejecting his objections without assigning any reasons, and in permitting the 5th respondent to submit an application for approval of the mining plan without his consent, as arbitrary and illegal.

While issuing rule nisi, and in directing notice returnable in four weeks, the Learned Single Judge observed that it was an admitted fact by the appellant-writ petitioner himself that the pattadar pass book was issued in favour of the 5th respondent in 1995 which, *prima facie*, went to support the contention of respondents 5 and 6 that family partition has been effected long back, and the parties thereto were in possession and enjoyment of their respective shares.

These observations, according to Sri Avinash Desai, learned counsel for the appellant-writ petitioner, are the reasons which weighed with the Learned Single Judge in refraining from passing an interim order; and, as such, an appeal under Clause 15 of the Letters Patent is maintainable.

We must express our inability to agree. An appeal, under Clause 15 of the Letters Patent, would lie only against "a judgment". As held

by a Division Bench of this Court, in **Kunala Subbarao vs. P.Nagaratnayamma**¹, deferring hearing of the writ petition, or a mere notice being issued in the writ petition, would not constitute a judgment, against which alone an appeal under Clause 15 of the Letters Patent would lie. As no orders have been passed in the WPMP, we are satisfied that the above referred observations of the Learned Single Judge cannot be construed as a “judgment” justifying invocation of our jurisdiction under Clause 15 of the Letters Patent.

When we asked Sri K.Raghuveer Reddy, learned counsel for the 5th respondent, as to why these observations should not be deleted, learned counsel would fairly state that the 5th respondent has no objection to these observations being deleted, provided the WPMP is heard after the 5th respondent is given an opportunity to put forth his case before the Learned Single Judge.

Suffice it, while setting aside the observations recorded in the proceedings dated 11.04.2017 in W.P.No.12780 of 2017, to permit the respondents herein to file their counter-affidavits within two (2) weeks from today. It is open to the appellant-writ petitioner to request the Learned Single Judge to take up the WPMP any day after two weeks. We have no reason to doubt that, on such a request being made for the WPMP to be heard early, the Learned Single Judge would give it its due consideration.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

25th October, 2017
JSU

¹ AIR 1982 AP 443

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Date: 25.10.2017

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