

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.23616 of 2017

ORDER:

The petitioners challenge proceeding No.BCW1/94/2017 dated 07.07.2017 of the 1st respondent refusing to grant interim stay pending appeal. The petitioners filed appeal pursuant to liberty granted by this Court in W.P.No.17474 of 2017 and have also filed an application for grant of interim prayer. The 1st respondent through the order impugned in the writ petition declined to grant interim order. The reasons that weighed with the 1st respondent summarily stated are that the subject matter of the appeal is not fit for cultivation and covered with 'RALLA GUTTA'. The 1st respondent further recorded that the petitioners were never in possession much less cultivated the land.

Sri Nagender Reddy vehemently contends that the remedy of appeal is a statutory remedy and the appeal is always considered to be continuation of the proceedings before the primary authority, and preservation of subject matter of appeal is a *sine qua non* for effective consideration and disposal of the appeal. He further contends that the findings now recorded by the 1st respondent are firstly behind the back of petitioners and secondly not borne out by record. He further objects to the findings by relying upon the notice issued by the 4th respondent. He prays for granting the interim relief as prayed for pending appeal.

The learned Assistant Government Pleader, on instructions, submits that the grant of interim order arises if the petitioners are found to be in possession or by preventing the petitioners from enjoying the property during pendency of appeal or the petitioners suffer loss or prejudice. According to her, in the case on hand, the land is not fit for cultivation and by observing the physical state of affairs, the interim relief is refused. According to her, the Government is in possession of the property and that the appeal stands posted to 03.08.2017 for hearing.

In the present writ petition, this Court is considering the order of the 1st respondent in refusing to grant interim order and the scope of judicial review keeping in view the pendency of appeal.

As the learned counsel appearing for both the parties have made their submissions, the submissions are referred to. However, no view is expressed on the merits of appeal but to meet the ends of justice and to enable the petitioners to effectively participate in the hearing of appeal and to preserve the subject matter as well, the writ petition is disposed of by this order :

- (a) The parties are directed to maintain *status-quo* as regards possession of subject matter for a period of three months from today or till the disposal of the appeal whichever is earlier.

(b) The 1st respondent is directed to dispose of the appeal expeditiously preferably within three months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

No order as to costs.

S. V. BHATT, J

Dt: 18-07-2017
Prv



THE HON'BLE SRI JUSTICE S.V.BHATT



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18-07-2017

Prv

