

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

WRIT APPEAL NO.1107 OF 2017

ORDER: (per Hon'ble the Acting Chief Justice 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.20837 of 2012 dated 09.06.2017. Respondents 1 and 2 herein filed the Writ Petition questioning the action of the Mandal Educational Officer in taking up construction of a school, under the guise of the proceedings of the Tahsildar dated 27.06.2012 in the first and second petitioners land admeasuring Ac.4.75 cts and Ac.5.00 cts in Sy. No.284/1 respectively situated in Udumulapadu village, Dhone Mandal, Kurnool District, instead of constructing the school in land allotted to the third respondent in Sy. No.284/1B, as illegal and arbitrary.

The proceedings under challenge in the Writ Petition is the advance handing over of land possession proceedings dated 27.06.2012 whereby the Tahsildar handed over an extent of Ac.200 cts of land in Sy. No.284/1B to the Secondary Education Department for construction of a KGBV school at Udumulapadu village, Dhone Mandal.

Learned Government Pleader for Revenue (Assignment) would submit that, while the appellants herein had filed their counter-affidavit in W.P. No.20837 of 2012, as early as on 07.12.2015 contending that an order of resumption was passed on 27.10.2007, respondents 1 and 2 herein had not questioned the

validity of the said order dated 27.10.2007, despite which the Learned Single Judge has, in the order under appeal, set aside the said order of resumption dated 27.10.2007 as bad in law.

Sri K. Ratanga Pani Reddy, Learned Counsel for the respondent-writ petitioner, would submit that, while the appellants had no doubt stated in their counter-affidavit that an order of resumption had been passed on 27.10.2007, they did not file a copy of the said order, in which event alone could the respondent-writ petitioners have subjected the same to challenge; the Learned Single Judge was justified in holding that the said order of resumption dated 27.10.2007 was bad in law as it was a nullity; the Learned Single Judge had recorded a finding that the notice was served by affixture on the subject land which is illegal; and, in the alternative, this Court should consider remanding the matter to the Learned Single Judge to enable the petitioner to now challenge the order of resumption dated 27.10.2007.

It is evident from the counter-affidavit, filed by the Tahsildar Dhone dated 07.12.2015, that reference is made therein to the order of resumption dated 27.10.2007. It is only if the said order had been subjected to challenge, and the appellants herein were given an opportunity to justify the validity of such an order would the Learned Single Judge has been justified in setting aside the order of resumption. Unless the order of resumption is questioned in a validly constituted legal proceedings, the said order cannot be set aside as these orders do not bear the brand of invalidity of its forehead. An order, even if not made in good faith, is still capable of legal consequences. Unless the necessary proceedings are taken

at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders. This is equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. (**Board of Trustees of Port of Kandla Port v. Hargovind Jasraj**¹; **Smith v. East Elloe Rural District Council**²).

Even if the order is void/voidable, the party aggrieved thereby cannot decide that the said order is not binding upon them. They must approach the Court and seek such a declaration. The order may hypothetically be a nullity and yet, even if its invalidity is challenged before the court in a given circumstance, the Court may refuse to quash the same on various grounds including the standing of the Petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person. Exercise of power under Article 226 of the Constitution is discretionary and the Court may, in appropriate cases, refuse to exercise its discretionary jurisdiction for good and valid reasons. (**Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**³; **Board of Trustees of Port of Kandla Port v. Hargovind Jasraj**⁴; **Pune Municipal Corporation v. State of Maharashtra**⁵; **State of**

¹ (2013) 3 SCC 182

² (1956) 1 All ER 855

³ (2011) 3 SCC 363

⁴ (2013) 3 SCC 182

⁵ (2007) 5 SCC 211

Punjab v. Gurdev Singh⁶; R. Thiruvirkolam v. Presiding Officer⁷; State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead)⁸ and Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd. etc.⁹). In such circumstances, the order of resumption dated 27.10.2007 could not have been set aside as bad in law even in the absence of a challenge to its validity.

As long as the order of resumption dated 27.10.2007 is in force, the respondents-writ petitioners cannot claim to be entitled to continue to remain in possession of the subject land. The order under appeal is set aside. Suffice it to make it clear that the order now passed by us shall not preclude the respondents-writ petitioners, if they so choose, from questioning the order of resumption dated 27.10.2007 in validly instituted legal proceedings. The Writ Appeal is disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

Date: 08-08-2017.

MRKR

⁶ (1992) ILLJ 283 SC

⁷ (1997) 1 SCC 9

⁸ (1996) 1 SCC 435

⁹ (1997) 3 SCC 443