

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1148 of 2017 & W.P.No.33011 of 2013

COMMON 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.V.M.P.No.2169 of 2017 in W.P.M.P.No.41071 of 2013 in W.P.No.33011 of 2013 dated 03.07.2017. The appellants herein are the petitioners in W.P.No.33011 of 2013. They filed the said writ petition seeking a mandamus to declare the action of the respondents, in highhandedly dispossessing them of their right in respect of the property in R.S.No.301, Street Nos.6 and 7, Budhavaaram (Wednesday) Market, Thatavarthi Vaari Veedhi, Bhimavaram, West Godavari District, wherein they were eking out their livelihood by selling fish/vegetables, as illegal and arbitrary.

Initially an interim order was passed in W.P.M.P.No.41071 of 2013 in W.P.No.33011 of 2013 on 19.11.2013 which was vacated by the order under appeal recording the submission of the learned Standing Counsel that the Commissioner, Bhimavaram Municipality was willing to accommodate the appellant-writ petitioners on construction of the sheds both for vegetable market as well as fish market.

Sri S.Shyamsunder Rao, learned counsel for the appellant-writ petitioners, would submit that the appellant-writ petitioners, who were carrying on business in the subject land for the past more than four decades, have now been thrown out; they have been asked to await completion of the construction of the subject building, which may take a couple of years; and their livelihood would be adversely effected in the interregnum, if an alternative place is not identified where they can carry on business till construction of the building is completed. Learned counsel would request that the appellant-writ petitioners may not be

shifted until and unless some temporary arrangement is made for them to eke out their livelihood till a permanent building is constructed.

Sri N.Venkateswarlu, learned Standing Counsel for the Bhimavaram Municipality, on instructions from the Commissioner, Bhimavaram Municipality, would submit that a vast extent of land is available in the premises of the vegetable/fish market; a permanent building is sought to be constructed in one portion of the said premises; the Commissioner, Bhimavaram Municipality, would identify an area, within the same premises, where the appellant-writ petitioners can carry on their business till construction of the building is completed; and, on completion of construction of the building, the Bhimavaram Municipality would allot shops by auction in which the appellant-writ petitioners can also participate.

It is evident that the appellant-writ petitioners, who are all petty vegetable/fish vendors, would be deprived of their livelihood, if they are not provided temporary accommodation till the permanent construction is completed. That does not, however, justify injuncting the Municipality from constructing a permanent building to house the vegetable/fish market.

We consider it appropriate, in such circumstances, to direct the Commissioner, Bhimavaram Municipality, to identify another place, in the very same premises for the appellant-writ petitioners to carry on their business; and only after allotting a specified area, wherein they shall be permitted temporarily to carry on business till construction of the building is completed, shall the petitioners be asked to vacate the place, from where they are presently selling vegetables/fish, to enable construction of a permanent vegetable/fish market. The Bhimavaram Municipality shall, while allotting shops on the basis of an auction, also consider whether the appellant-writ petitioners can be given preference

in the light of the judgment of the Supreme Court in **Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai**¹.

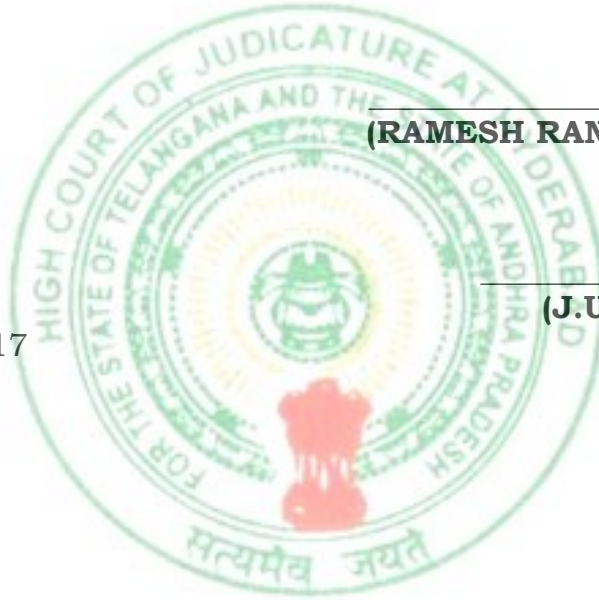
Subject to the above observations, WA.No.1148 of 2017 is disposed of. Both Sri S.Syamsunder Rao, learned counsel for the appellant-writ petitioners, and Sri N.Venkateswaralu, learned Standing Counsel for the Bhimavaram Municipality, would submit that, in the light of the order now passed by this Court in the writ appeal, nothing survives in W.P.No.33011 of 2013.

W.P.No.33011 of 2013 is also disposed of accordingly. 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)

18th August, 2017
JSU



¹ (2014) 1 Supreme Court Cases 490

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Date: 18.08.2017

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