

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.154 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.39276 of 2016 dated 15.11.2016. The appellant herein is the petitioner in the writ petition. He filed the writ petition questioning the action of respondents 2 to 4, in attempting to remove him from an extent of 08 meters length x 06 meters width of land near Vegetable Market, Gudimalkapur, Hyderabad, as illegal and arbitrary.

By the order under appeal the Learned Single Judge observed that no details such as survey number, municipal number etc were furnished; the so-called temple, which is alleged to have granted permission to the appellant, was not made a party; no document was filed to show that lease or permission was granted to the appellant by the temple management; no material was filed to show that the appellant had been paying lease amount, and that he was in valid occupation of the property which was sought to be removed; the appellant had only enclosed a document issued by the Controller, Legal Metrology, Hyderabad, which was with reference to the quality of the weighing machine, and had nothing to do with the status of the property; even this document did not contain any details whether the alleged business was being carried on at the premises claimed by the appellant; and the affidavit was bereft of essential details to set up the claim that the appellant was in occupation of the subject property for a long time and, without following the due process, the Municipal Corporation or the revenue authorities were trying to throw him out. The writ petition was dismissed as misconceived.

Sri Bajrang Singh Thakur, learned counsel for the appellant, would submit that the fact that the appellant is in occupation of the subject land has not been denied by the respondents by filing a counter affidavit; the Learned Single Judge ought to have invited a counter affidavit from the respondents as to whether or not the appellant was in occupation of the subject property; and, as the appellant is in occupation of the subject land, the Learned Single Judge erred in dismissing the writ petition.

Whether the appellant is in occupation of the subject land, whether he has been in possession thereof for the past four decades etc, are questions of fact which would, ordinarily, not be examined in proceedings under Article 226 of the Constitution of India. As noted hereinabove, the Learned Single Judge has referred to several factors in coming to the conclusion that the writ affidavit was bereft of even the basic details necessitating the Court to entertain the appellant's claim to be in occupation of the subject land. In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. Suffice it to make it clear that this order shall not preclude the appellant from availing the remedy of filing a Civil suit before the Civil Court of competent jurisdiction and, on its jurisdiction being so invoked, the Civil Court would examine the appellant's claim on its merits uninfluenced by any observations made either in the order under appeal or by us in this order. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

07th February, 2017

Note: Issue C.C. in three days.

JSU



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER



Writ Appeal No.154 of 2017

Date: 07.02.2017

JSU