

THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN

&

THE HON'BLE SMT JUSTICE T. RAJANI

WRIT APPEAL No.752 of 2017

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

Though the name of Sri Mohd Abdul Qavi Abbasi, learned counsel for the first respondent-writ petitioner, is printed in the cause list, neither is the learned counsel present nor is there any representation on his behalf. This appeal, under clause 15 of the Letters Patent, is preferred against the order of the learned single Judge in WP.No.24539 of 2016 dated 25.07.2016.

The appellant herein is the fifth respondent in the writ petition. The first respondent herein filed the said writ petition to declare the action of the respondents in not considering his representation dated 19.07.2016, and in not taking action against the fifth respondent, as illegal and arbitrary. A consequential direction was sought to the respondents to consider his representation dated 19.07.2016, to investigate the matter, and register a case against the fifth respondent for trespass and theft into the petitioner's mulgies. By way of an interlocutory order, the petitioner sought a direction to the respondents to give back possession of the subject mulgies. The interim relief sought for goes even beyond the main relief sought for in the writ petition which is only to register the complaint against the fifth respondent for trespass and theft, and to investigate the matter in accordance with law.

The learned single Judge has, in the order under appeal, recorded that, on receipt of the complaint, the police officials had asked the petitioner to provide documents of ownership/tenancy; in view of the documents filed by the petitioner, it was established that he had three mulgies since December 1986; as submitted by the learned counsel for the petitioner, there was no dispute pending between the petitioner and the landlord; the petitioner was paying rent regularly through cheques and cash, as the landlord was staying in Karnataka; and the fifth respondent had played some role in stealing the articles as was mentioned in the complaint.

The learned Government Pleader appears to have stated before the learned single Judge that, though the petitioner had filed the documents sought for by the police, he had not furnished the same to the concerned police station. Disbelieving the contention of the learned Government Pleader, the learned single Judge directed the Assistant Commissioner of Police, Saidabad and the Station House Officer, Saidabad Police Station to take action, as per law, on the complaint of the petitioner; if anyone claims and furnishes proof, thereafter investigate the matter; and, if the petitioner was found in possession on or before 18.07.2016, then possession of the same should be restored to the petitioner. The writ petition was disposed of directing the respondents to take into consideration the documents filed i.e. the rental agreement and the receipts filed by the petitioner before this court, as documents to be submitted to them.

The order under appeal was passed, at the stage of admission, even without the fifth respondent being put on notice much less being

given an opportunity of being heard. The order under appeal goes even beyond the main relief sought for in the writ petition. In any event, such an order could have only been passed after the appellant-fifth respondent was put on notice, and was given an opportunity of being heard. As the appellant-fifth respondent has been denied the opportunity of contesting the matter, we consider it appropriate to set aside the order under appeal, and restore WP.No.24539 of 2016 to file.

The Writ Appeal is disposed of accordingly. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

June 19, 2017
DSK



RAMESH RANGANATHAN, HACJ

T. RAJANI, J