

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

Writ Appeal Nos.850 and 851 of 2017

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

Both these appeals are preferred under Clause 15 of the Letters Patent against the order passed by the Learned Single Judge in W.P.Nos.37194 and 37427 of 2016 dated 13.04.2017 respectively. The respondents herein invoked the jurisdiction of this Court seeking a mandamus to declare award No.30 of 2007 dated 21.03.2007 and award No.32 of 2007 dated 16.03.2007 on the file of the Special Deputy Collector, Land Acquisition, Unit-I, Vamsadhara Reservoir Project, Hiramandam, Srikakulam District as having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 30 of 2013 (for short "the 2013 Act").

The requirement of Section 24(2) of the 2013 Act, for acquisition proceedings to lapse, is that the award should have been passed five years before the coming into force of the 2013 Act on 01.01.2014 i.e the award should have been passed on any date prior to 01.01.2009. In the present cases the impugned awards are dated 21.03.2007 and 16.03.2007 respectively, and both of them were passed prior to 01.01.2009. The conditions stipulated in Section 24(2) of the 2013 Act, for acquisition proceedings to lapse, are that, despite an award being passed before 01.01.2009, possession of the land has not been taken by the Government before 01.01.2014, and compensation in respect of a majority of the landholder has not been paid by that date.

In the affidavits, filed in support of the Writ Petitions, the respondent-writ petitioners have asserted violation of both these conditions. They claim that possession of the acquired lands have not

been taken till date, and that compensation, for a majority of the landholders, has not been paid.

In the counter-affidavits filed by the Special Deputy Collector, in the respective writ petitions, it is asserted that not only was compensation paid to all the awardees, but possession of the land was taken by the Irrigation Department from them on 03.03.2006 and 01.11.2006. No reply affidavits have been filed to these counter-affidavits.

The Learned Single Judge, however, shifted the onus to the appellants herein (respondents in the writ petition) after holding that they had failed to produce any evidence as to the taking possession of the subject houses by conducting panchanama; and that Section 24(2) of the 2013 Act has been violated. The Learned Single Judge made it clear that, if the appellants herein (respondents in the writ petition) did not require the subject houses, the respondent-writ petitioners would be required to refund the amount paid to them with interest, payable on bank deposits, from the date of payment under the impugned awards.

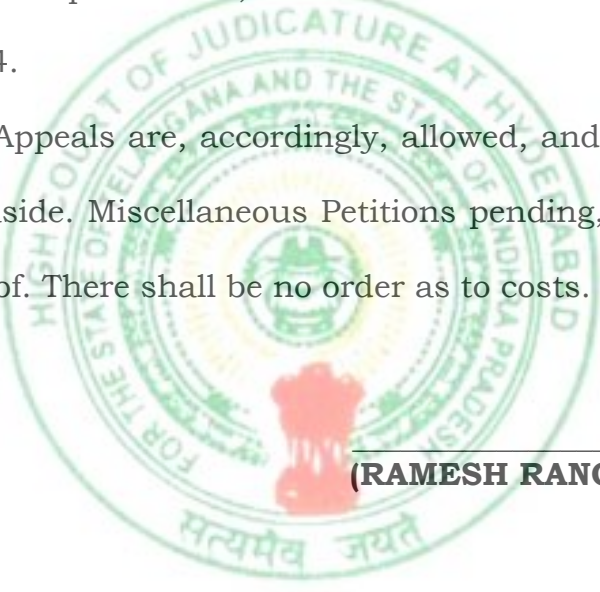
Before us, the learned Advocate General would contend, not without justification, that, despite a specific denial in the counter-affidavits, the Learned Single Judge has shifted the onus to the appellants, though the burden lies on the respondent-writ petitioners, who had invoked the jurisdiction of this Court, to establish that they continued to retain possession of the subject houses on or after 01.01.2014.

On the other hand Sri D. Krishna Murthy, learned counsel for the respondent-writ petitioners, would draw our attention to the possession handing over statements, to submit that, while the awards were passed on 21.03.2007 and 16.03.2007 respectively, possession is said to have been taken even prior thereto i.e on 03.03.2006 and 01.11.2006 which

itself shows that the so called “possession handing over statements” are not true. The fact, however, remains that even this aspect has not been examined in the order under appeal.

The onus is on the respondent-writ petitioners to establish that they continued to retain the possession of the subject houses on or after 01.01.2014. As their assertion in the Writ Affidavits are denied in the counter-affidavits, and as no reply affidavit has been filed thereto, we consider it appropriate to set aside the orders under appeal and remand the matters to the Learned Single Judge for his consideration afresh on whether or not the respondent-writ petitioners continued to retain possession, of the houses under acquisition, on or after 01.01.2014.

The Writ Appeals are, accordingly, allowed, and the orders under appeal are set aside. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

10th July, 2017

Note; Issue C.C. tomorrow.

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Date: 10.07.2017

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