

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1360 of 2013

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.18068 of 2010 dated 01.07.2013. Respondents 4 to 7 in the Writ Petition have preferred this appeal.

The 4th respondent herein filed the Writ Petition to declare the action of the 3rd respondent, in disconnecting and dismantling the water pipeline (old and new) in pursuance of the memo dated 26.06.2009 issued by the District Panchayat Officer, Khammam, as illegal and null and void.

The dispute, in the present case, relates to the drinking water and drainage pipelines which were hitherto laid over the land belonging to the 2nd appellant-Church. The 4th respondent-writ petitioner's father was a Pastor in the 4th appellant-Church. On the ground that the 2nd appellant-Church did not have adequate funds to purchase the entire extent of land, the 4th respondent-writ petitioner's father appears to have agreed to purchase a portion of the land with his own funds, to enable the Church to purchase and utilise the remaining portion.

On the land purchased by him, the 4th respondent-writ petitioner's father appears to have constructed a house to which drinking water and drainage pipelines were connected. These pipelines, admittedly, pass through the land belonging to the 2nd appellant-Church. These drinking water and drainage pipelines appear to have been dismantled without putting the 4th respondent-writ petitioner on notice, questioning which he filed the present Writ

Petition, resulting in the order, under challenge in this appeal, being passed.

Sri K.Jagadishwar Reddy, learned counsel for the appellants, would submit that the 4th respondent-writ petitioner cannot claim, as of right, that the drinking water and drainage pipelines, laid through the land of the 2nd appellant-Church, should be continued to be used by him; and the 4th respondent-writ petitioner's right, if any, is only for a drinking water and drainage pipeline to be laid adjacent to a public road, without interfering with the rights of the 2nd appellant-Church over its property.

On the other hand Sri N.C.Das, learned counsel for the 4th respondent-writ petitioner, would submit that, since the drinking water and drainage pipelines have been in existence for the past more than four decades, the 2nd appellant-Church cannot be heard to contend that the existing drinking water and drainage pipelines should be removed; and the 4th respondent-writ petitioner be forced to receive drinking water on a fresh pipeline being laid through a circuitous route, which would result in their having to incur heavy expenditure.

The legality of the act of removing the drinking water and drainage pipelines is in doubt, with the 2nd appellant-Church claiming that the pipelines were in a damaged condition, it burst because of its usage over four decades, and no one had damaged the pipelines. It does not, however, appear to be in dispute that the drinking water and drainage pipelines, connected to the 4th respondent-writ petitioner's house, pass through the private land of the 2nd appellant-Church.

While a mandamus can, undoubtedly, be issued to the 3rd respondent to provide drinking water and drainage pipelines to the 4th

respondent-writ petitioner on payment of the prescribed charges, the public law remedy, under Article 226 of the Constitution of India, would not be available to adjudicate disputes, relating to easementary rights of the 4th respondent-writ petitioner and the 2nd appellant-Church, as they are in the private law realm.

The question whether the 4th respondent-writ petitioner, on his father having purchased a part of the land to enable the 2nd appellant-Church to purchase the other, has easementary rights over the land, atleast to the extent of having the drinking water and drainage pipelines (which are connected to his house) pass through the land of the 2nd appellant-Church, are all matters which this Court would not, ordinarily, examine in proceedings under Article 226 of the Constitution of India, as such questions can only be determined on the basis of the evidence adduced by the respective parties before the competent Civil Court.

Suffice it, therefore, to modify the order of the Learned Single Judge and direct the 3rd respondent to provide drinking water and drainage pipelines forthwith to the 4th respondent-writ petitioner, without laying the pipelines through the land belonging to the 2nd appellant-Church, on payment of the prescribed charges. It is made clear that the order now passed by us shall not disable the 4th respondent-writ petitioner from availing their common law remedy of a Civil Suit before the competent Civil Court to enforce his claim of easementary rights to have the drinking water and drainage pipelines laid through the 2nd appellant-Church's land. On its jurisdiction being invoked by the 4th respondent-writ petitioner, the Civil Court shall adjudicate their claims uninfluenced by any observations made either in this order, or in the order under appeal. It is also open to the 4th respondent-writ petitioner to claim damages in appropriate legal

proceedings for the alleged illegal damage of the existing pipelines.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

06th December, 2017
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