

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT APPEAL NO.869 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 *ad interim* order passed by the learned Single Judge in WP.No.17984 of 2017 dated 13.06.2017.

The notification dated 16.12.2016, impugned in the Writ Petition, was issued to lay a pipeline over the petitioner's land of an extent of 0.146 hectares in Survey No.208, and 0.138 hectares in Survey No.207, situated at M.Nagulapalli Village, Dwaraka Tirumala Mandal, West Godavari District. The respondent-writ petitioner questioned the said notification before the learned Single Judge as being arbitrary, illegal, against public policy and in violation of their Constitutional right under Article 300-A of the Constitution of India.

At the stage of admission the Learned Single Judge, while ordering notice to the unofficial respondent No.6 and posting the matter to 10.07.2017, directed that, in the meanwhile, no pipeline should be laid over the petitioner's land. On the ground that the matter was not being taken up by the learned Single Judge, the jurisdiction of this Court, under Clause 15 of the Letters Patent, has been invoked.

Sri Kakara Venkata Rao, learned counsel for the appellants, has referred to several judgments of the Supreme Court in support of his submission that the power to lay a pipeline over the petitioner's land is conferred on the appellant under the Petroleum

and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 ("the Act" for brevity), and that laying of the pipeline is for a public purpose i.e., industrial development. While contending that a Writ Appeal would not lie against an *ad interim* order passed by the learned Single Judge, Sri Venkateswara Rao Gudapati, learned counsel for the respondent-writ petitioner, would draw our attention to Section 3(1) of the Act to contend that it is only if it is in public interest would the appellants be justified in laying a pipeline; the said pipeline is being laid only for the purpose of supplying gas to the sixth respondent, a private sector company; the averments, in the affidavit filed in support of the Writ Petition, can only be rebutted by the appellants and the sixth respondent by way of a counter affidavit before the learned Single Judge; and these factual aspects would not be examined for the first time in an intra-Court appeal under Clause 15 of the Letters Patent.

While an intra-Court appeal, even against an *ad interim* order, is no doubt maintainable in case this Court is satisfied that the appellant would suffer grave prejudice and substantial injustice thereby, factual aspects would not, ordinarily, be examined for the first time in proceedings under Clause 15 of the Letters Patent, and the averments in the writ affidavit should, ordinarily, be rebutted by way of a counter affidavit to be filed in the Writ Petition. Ordinarily, a pure question of law, unrelated to facts, which is capable of being examined in an intra-Court appeal against an *ad interim* order.

Questions, including whether a pipeline has been laid by the appellant at its own cost or whether it has been funded by the sixth respondent; whether supply of gas to the sixth respondent is

in public interest, conferring power on the appellant under Section 3(1) of the Act; etc are all matters which the learned Single Judge would be required to examine on the basis of the averments in the writ affidavit, and the counter affidavits filed by the appellant and the sixth respondent. We see no reason to undertake such an examination for the first time in an intra-Court appeal under Clause 15 of the Letters Patent.

While both Sri Kakara Venkata Rao, learned counsel for the appellants and Sri Ch.Samson Babu, learned counsel for the sixth respondent, would request this Court to direct the learned Single Judge to take up the matter out of turn, it would be wholly inappropriate for us to determine the board of the learned Single Judge. We have no reason to doubt that, on such a request being made, the learned Single Judge would examine the feasibility of taking up the matter at the earliest.

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

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

19th July 2017
RRB