

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.269 OF 2017

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

This Appeal, under clause 15 of Letter Patent, is preferred against the order passed by the learned Single Judge in Writ Petition No.3541 of 2017 dated 02.02.2017, whereby the petitioners were relegated to the alternative remedy of an Appeal against the eviction orders passed on 27.01.2017 under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (for short, 'the Act').

Sri T. Koteswara Prasad, learned counsel for the appellants, would submit that the notice was issued in the name of the 1st appellant's father who died several years ago; appellants 2 to 5 are protected by the *interim* order of this Court in W.P.M.P. No.17642 of 2016 in W.P. No.14151 of 2016 dated 26.04.2016; and the action of the respondents, in issuing the notice of eviction, is illegal.

Learned Government Pleader for Revenue would point out that the appellants had, subsequently, filed Writ Petition No.29748 of 2016 and the learned Single Judge, by *interim* order in W.P.M.P. No.39748 of 2016 dated 06.09.2016, had directed the respondents not to evict the petitioners except by following the due process of law; consequently, notice of eviction was issued under the Act; and action is now sought to be taken and the appellants-writ petitioners evicted in accordance with law.

A notice was sent to the 1st appellant's father on 21.07.2017. It is the 1st appellant's case that his father passed away several years ago. If that be so, he cannot be sought to be evicted on the basis of a notice issued, under Section 6 of the Act, in the name of his father, who was not even alive on the date of issuance of the notice. The impugned notice, in so far as the 1st appellant is concerned, is set-aside. While the order passed by the learned Single Judge in W.P.M.P. No.36806 of 2016 in Writ Petition No.29748 of 2016 dated 06.09.2016 no doubt enabled the respondents to evict appellants 2 to 5 by following the due process of law, the *interim* order, in W.P.M.P. No.17642 of 2016 in W.P. No.14151 of 2016 dated 26.04.2016, required them not to interfere with the possession of appellants 2 to 5. The notice of eviction, issued under Section 6 of the Act in so far as appellants 2 to 5 are concerned, is also set-aside. It is made clear that this order shall not preclude the respondents from issuing a notice to the 1st appellant, and thereafter take action for his eviction in accordance with law. In so far as appellants 2 to 5 are concerned, it is open to the respondents to initiate action afresh for their eviction after the order in W.P.M.P. No.17642 of 2016 in W.P. No.14151 of 2016 dated 26.04.2016 is vacated.

The learned Single Judge has relegated appellants 6 to 26 to the remedy of a statutory appeal under the Act. In an intra-Court Appeal, under Clause 15 of the Letter Patent, interference is justified only if the order under appeal suffers from a patent illegality. The discretion exercised by the learned Single Judge, in relegating appellants 6 to 26 to the remedy of a statutory appeal, does not suffer from any such infirmity.

The Writ Appeal, in so far as the appellants 6 to 26 are concerned, is dismissed and in so far as appellants 1 to 5 are concerned is disposed of. As a sequel, pending miscellaneous petitions, if any, shall stand disposed of. No order as to costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 07-03-2017.
DSH/SIVA



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(Judgment of the Division Bench delivered by
Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Date. 07-03-2017

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