

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1828 of 2017 and Writ Petition No.34861 of 2017

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This writ appeal is, no doubt, preferred against the *ad interim* order passed in W.P.No.34861 of 2017 dated 20.10.2017 whereby interim stay of all further proceedings, pursuant to the notice issued under Section 7 of the A.P. Land Encroachment Act, 1905 (for short "the Act"), was granted till the documents/revenue records of the property, which is the subject matter of the proceedings, were provided to the respondent-writ petitioners. With the consent of both the learned Government Pleader for Revenue (TG) appearing on behalf of the appellants, and Sri Avinash Desai, learned counsel appearing on behalf of the respondent-writ petitioners, the writ petition itself is being disposed of.

The relief sought for in the writ petition, is for a mandamus to declare the action of the respondents therein, particularly the Tahsildar, Tirumalgiri Mandal, in not providing essential documents and records of the property, requested by the writ petitioners, though they are the subject matter of the proceedings under Section 7 of the Act, as being illegal and arbitrary.

By their letter dated 03.08.2017, the respondent-writ petitioners requested the Tahsildar, Tirumalgiri Mandal to permit them to examine all the revenue records including but not limited to, the Sethwar, the Khasra Pahani, the Vasool baqi, the pahanies, any mutation proceedings etc in respect of the land in old Survey No.196, corresponding to GLR No.243 of Lothkunta, Secunderabad Cantonment, Hyderabad District etc.

The present writ petition is the second round of litigation. The respondent-writ petitioners had earlier invoked the jurisdiction of this

Court filing W.P.No.24298 of 2015 wherein they sought a writ of certiorari to quash the notice issued by the Tahsildar, Tirumalgiri Mandal dated 31.07.2015, under Section 7 of the Act, as illegal, arbitrary, without jurisdiction and contrary to law.

The Tahsildar, Tirumalgiri Mandal had issued a notice, under Section 7 of the Act, dated 31.07.2015 calling upon the respondent-writ petitioners to show cause, within 7 days, why they should not be subjected to eviction from the land admeasuring an extent of Ac.18.02 guntas, out of the total extent of Ac.119.34 guntas, described as Government land entered in the General Lease Register No.243 (part) located in Cantonment area, Tirumalagiri Village and Mandal, Hyderabad District.

The jurisdiction of this Court was invoked questioning the said notice and, on W.P.No.24298 of 2015 being disposed of by the Learned Single Judge by his order dated 21.12.2015, the respondent-writ petitioners preferred Writ Appeal No.9 of 2016. A Division Bench of this Court, by its order dated 28.04.2017, disposed of the writ appeal granting the respondent-writ petitioners six weeks time to file their reply to the notice and, in case they so choose, to examine the records; on receipt of their reply, the Tahsildar, Tirumalgiri Mandal was directed to fix a date for hearing, and pass a reasoned order. The Division bench made it clear that the 4th respondent should pass an order uninfluenced by any observations in the order in the writ appeal or in the order of the Learned Single Judge.

After pronouncement of judgment, when a request was made by the Learned Senior Counsel, appearing on behalf of the appellants therein, to fix a time frame for the original authority to pass an order, and to direct him not to take any coercive steps for a period of 30 days after the order was passed, in case the Original Authority were to hold against the respondent-writ petitioners, the Division Bench directed the

original authority to pass an order at the earliest, and in any event not later than four months from the date of receipt of a copy of the order. The Division Bench further observed that, as the respondent-writ petitioners had a right of appeal under the Statute, and the period prescribed for preferring an appeal was 60 days, the respondents therein should not to take any coercive steps, in case an order was passed against the respondent-writ petitioners, for a period of four weeks from the date of communication of the order. The Division Bench made it clear that both the Original Authority and the Appellate Authority, in case their jurisdiction was invoked, should pass orders on merits uninfluenced by any observations made in the order.

Aggrieved by the order of the Division Bench, the respondent-writ petitioners carried the matter in appeal to the Supreme Court by way of SLP(C).No.17622 of 2017. The Supreme Court, in its order dated 21.07.2017 after noting that the Division Bench had directed the petitioners therein to file a reply, and had also directed the authority concerned to take appropriate proceedings in accordance with law, observed that it was open to the petitioners to raise all such contentions as were available to them on merits as per law. The Special Leave Petition was, accordingly, dismissed.

Thereafter, the jurisdiction of this Court was again invoked by way of W.P.No.34861 of 2017 seeking the documents referred to hereinabove. While the direction sought for, in the Writ Petition, was to the Tahsildar, Tirumalgiri Mandal to furnish the records, it is stated by Sri Avinash Desai, Learned Counsel for the petitioner, that these documents are available with the District Collector, Ranga Reddy; and the respondent-writ petitioners have filed an application for such documents to be furnished.

The respondent-writ petitioners should have waited till an order was passed by the Tahsildar, Tirumalgiri Mandal, and should thereafter

have subjected the order, if any passed against them, to challenge on such grounds as were available to them in law, including that the documents sought by them were not furnished, more so as the petitioner's right to challenge the order of the Tahsildar was specifically left open and the earlier order of the Division Bench protected the respondent-writ petitioners from coercive action by the appellants herein for a period of four weeks, after the order was communicated to them. As a result they would not suffer any prejudice, even in case an order adverse to them were to be passed.

We see no reason to keep the Writ Petition pending on the file of this Court as the respondent-writ petitioners' request, for furnishing of documents, can be acceded to by the appellants in case the records are available. In case they are not, the respondent-writ petitioners may be intimated of the non-availability of such documents.

While failure on the part of the concerned officials in making available copies of the documents must undoubtedly be faulted, the action of the respondents-writ petitioners, in filing the present Writ Petition even before an order is passed by the Tahsildar, Tirumalgiri Mandal, cannot also be approved, as all the contentions, put forth in the Writ Petition, could have been urged after an order was passed by the Tahsildar, Tirumalgiri Mandal.

The District Collector, Ranga Reddy shall, in case the records are available, make available copies thereof to the respondent-writ petitioners and, if they are not available, he shall so intimate the respondent-writ petitioners within 10 days from today. The Tahsildar, Tirumalgiri Mandal shall, thereafter, intimate the respondent-writ petitioners of the next date of hearing and, thereafter, take necessary action in accordance with law.

Both the Writ Appeal and the Writ Petition are 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)

04th December, 2017
JSU



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Date: 04.12.2017

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