

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1763 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 order passed by the Learned Single Judge in W.P.No.10595 of 2005 dated 03.08.2017. The respondents in W.P.No.10595 of 2005 have preferred this appeal. Respondents 1 to 3 herein filed the said writ petition to declare the notice issued by the 3rd respondent on 27.03.2005 as illegal, arbitrary and without jurisdiction.

By the notice impugned in the writ petition dated 27.03.2005, the 3rd appellant herein informed the respondent-writ petitioners that the 2nd appellant had directed that the subject lands be taken possession of; and, with regards surrender of the said lands, the respondent-writ petitioners should appear before him on 04.04.2005 along with the records. Aggrieved thereby, the respondents herein filed W.P.No.10595 of 2005.

In the order under appeal the Learned Single Judge observed that around Acs.26.00 of land was surrendered as surplus by the father of the respondent-writ petitioners, which was in his possession as a lessee; Section 12(6) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act (for short "the Act") makes it clear that only when the land is surrendered, by the tenant as well as the owner, the provisions of Section 11 would apply; when the land is surrendered by the tenant, and is not surrendered by the owner, the provisions of Section 12(4) of the Act would apply, and the possession of the land would revert to the owner; in view of Rule 9 of the A.P. Land Reforms Act (Ceiling) Rules, 1974 the question of accepting a surrender, when it is surrendered by the tenant, would not arise; when the tenant

surrenders the land in his holding as lessee, the same has to be recorded; if such a course is not adopted, untold complications would arise; for the purpose of computation of the holding of the land of a person under the Act, possession under various capacities has also been directed to be included; in the present case, the respondent-writ petitioners had proposed Acs.26.00 of land in their possession as excess land; the primary authority could not reject this by recourse to Section 10 of the Act; he was bound to accept the same; as it would revert back to the owner, the Tribunal had to ascertain whether the owner also holds excess land; it can then direct him to surrender the excess, if any; and if he is within the limits, it has to be recorded as such, and the proceedings have to be closed. The Learned Single Judge further observed that, since the order had attained finality in appeal, the impugned notice should be set aside.

It is necessary to note that the Primary Tribunal had computed the holding of the declarant, and had held that land equivalent to 1.6997 standard holding was liable to be surrendered. In appeal, the holding was reduced, and the declarant was directed to surrender 0.6697 standard holding under the Act. The Primary Tribunal had rejected the request of the father of the respondent-writ petitioners on the ground that they were not in physical possession and enjoyment of the land, and the same was mortgaged to the Corporation for excavation of borewells; aggrieved thereby, the respondent-writ petitioners' father had preferred an appeal in LRA.No.35 of 1987 which was allowed by the Land Reforms Appellate Tribunal, West Godavari, Eluru setting aside the order of the Primary Tribunal.

The learned Government Pleader for Revenue does not dispute the fact that the order of the Primary Tribunal was set aside in appeal in LRA.No.35 of 1987 by the Land Reforms Appellate Tribunal. If that be so, the said order (an order inter-parties) was binding both on the appellants and the respondents herein. As the order in LRA.No.35 of

1987 has admittedly attained finality, the 3rd appellant was not entitled to reopen the matter, and issue a notice to the respondent-writ petitioners to surrender the land contrary to the order of the Appellate Tribunal.

Learned Government Pleader for Revenue would rely on an order of the Division Bench of this Court, in **Director of Settlements, Hyderabad vs. Neerupaka Rama Krishna**¹, to contend that, ordinarily, a writ is not maintainable against a show cause notice; and, as and when a show cause notice is issued, the party gets an opportunity to place his case before the authority concerned. The fact remains that the power of judicial review, under Article 226 of the Constitution of India, forms part of the basic structure of the Constitution of India and cannot be negated or circumscribed even by a constitutional amendment, much less by a statutory provision (**L.Chandra Kumar vs. Union of India**²).

Among the grounds on which a writ petition would be entertained by this Court is where the impugned order is in violation of the principles of natural justice, or it violates the fundamental rights of the petitioner, or is an order wholly without jurisdiction (**Whirlpool Corporation vs. Registrar of Trademarks, Mumbai**³). As the order in LRA.No.35 of 1987 has attained finality, it cannot be reopened in subsequent proceedings. The 3rd appellant, therefore, lacked jurisdiction to reopen the matter and issue a notice to the respondent-writ petitioners. As the action of the 3rd appellant in issuing a notice is evidently without jurisdiction, there is no bar for a writ petition to be entertained against such a notice. Further, interference in an intra-court appeal, under Clause 15 of the Letters Patent, is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

¹ 2001(5) ALD 828 (DB)

² AIR 1997 SC 1125

³ (1998) 8 SCC 1

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

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

22nd November, 2017
JSU



