

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

Writ Appeal No.1996 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 interim order passed by the Learned Single Judge in W.P.M.P.No.50412 of 2017 in W.P.No.40609 of 2017 dated 12.12.2017.

The respondents herein filed the writ petition seeking a mandamus to declare the action of the Tahsildar, Dowleswaram Mandal, East Godavari District, in demolishing the structures, of their building of an extent of 172 square yards in Survey No.337 situated in Block No.20 and present Block No.18 bearing plot No.1 of Dowleswaram Gram Panchayat, by invoking the provisions of the A.P. Land Encroachment Act (for short "the Act") vide notice dated 15.11.2017, without considering their explanation dated 20.11.2017, as illegal and arbitrary. By way of interim relief, the respondent-writ petitioners sought a direction to the Tahsildar not to interfere with the restoration of the demolished structure in an extent of 172 square yards in Survey No.337. Another interim direction, which the respondent-writ petitioners sought, was to direct the Tahsildar to pay damages of Rs.25 lakhs to them in relation to the illegal demolition made by him.

By the order under appeal, the Learned Single Judge suspended the impugned order dated 15.11.2017, and the order of the Tahsildar dated 23.11.2017, and directed him to restore status quo ante prior to the demolition of the premises of the respondent-writ petitioners by reconstructing the same within two weeks. The Tahsildar was directed to pay costs of Rs.10,000/- to the 1st respondent-writ petitioner, and the Principal Secretary (Revenue) was directed to take disciplinary action against the Tahsildar for his blatant disregard of the provisions of the Act.

It is not in dispute that this order was passed without giving the respondents in the writ petition (appellants herein) an opportunity of filing their counter-affidavit. The Learned Single Judge has, in the order under appeal, observed that both the orders dated 15.11.2017 and 23.11.2017 are *mala fide*; and demolition of the respondent-writ petitioners' premises, by the Tahsildar on the said ground, is equally *mala fide*.

Malice has to be pleaded and proved and no finding of malice can, ordinarily, be recorded, without the person, against whom malice is alleged, being arrayed as a respondent eo-nominee (**State of Bihar vs. P.P.Sharma¹**). The question whether status-quo ante should be restored, which in effect means that the Tahsildar is bound to re-construct the demolished structure, could only have been considered, after the respondents in the writ petition had filed their counter-affidavit. Likewise, an order directing disciplinary action to be taken against the Tahsildar could only have been passed after he was given an opportunity of being heard.

We are satisfied, therefore, that the order under appeal necessitates being, and is accordingly, set aside. The WPMP is restored to file. As it, prima-facie, seems that the impugned notice under Section 7 of the Act did not even call upon the respondent-writ petitioners to show cause why the encroachment should not be removed, the consequential order passed under Section 6 of the Act is, prima facie, in violation of principles of natural justice. Suffice it, therefore, to direct the appellants herein not to interfere with the respondent-writ petitioners' possession of the subject property until further orders in the writ petition. The order now passed by us shall be the interim order in the writ petition. While the respondent-writ petitioners may carry on business thereat, as long as the interim order now passed by us continues to remain in force, they shall not make any construction or change the nature of the property until further orders.

¹ AIR 1991 SC 1260

It is open to the appellants to file a petition to vacate the said interim order. On such a petition being filed, the Learned Single Judge shall consider it on its merits, without being influenced by any observations made in this order.

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)

27th December, 201
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Date: 27.12.2017

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