

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1872 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.M.P.No.47391 of 2017 in W.P.No.38152 of 2017 dated 28.11.2017.

The appellants herein filed W.P.No.38152 of 2017 seeking a writ of mandamus to declare the proceedings of the Land Acquisition Officer under award No.08/2008 dated 25.03.2008, and other awards passed in the year 2008, following the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short "the 1894 Act") on 12.12.2007 and the declaration under Section 6(1) dated 17.12.2007 on the file of the Special Deputy Collector (LA), Unit II, BRR Vamsadhara Project in respect of houses in Tulagama Village, Hiramandalam Mandal, Srikakulam District as having lapsed, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, 2013 (for short "the 2013 Act"); and for a consequential direction to the respondents to compensate, rehabilitate and resettle all the appellant-writ petitioners as per the provisions of the 2013 Act.

In the order under appeal the Learned Single Judge took note of the submissions, urged on behalf of the appellant-writ petitioners, that, though awards were passed, possession was not taken. The contention of the learned Assistant Government Pleader, based on a copy of the proceedings produced by him before the Court, that possession was taken and signatures of the appellant-writ petitioners were also obtained, the enquiry under Section 5-A of the 1894 Act was dispensed with, and possession was taken long back by paying compensation, were also noted.

The Learned Single Judge thereafter observed that payment of compensation was not denied and, though awards were passed in the year 2008, they were challenged after a period of nine years. The Learned Single Judge recoded the request of the learned Assistant Government Pleader that time be granted for filing counter. However, since the learned counsel for the appellant-writ petitioners wanted an order to be passed in the WPMP, the Learned Single Judge dismissed the WPMP.

Ms. Vasudha Nagaraj, learned counsel for the appellant-writ petitioners, would submit that Section 24(2) of the 2013 Act requires acquisition proceedings initiated, and awards passed under Section 11 of the 1894 Act, before 01.01.2009 to be held to have lapsed if compensation has not been paid to the land owners, or possession of the land had not been taken, before 31.12.2013; while compensation was undoubtedly paid, after an award was passed, the appellant-writ petitioners continue to retain possession of the subject land; the proceedings placed before the Learned Single Judge, containing the signatures of the appellant-writ petitioners, only shows symbolic possession; it is only if actual physical possession, of the subject land, had been taken before 31.12.2013, would the land acquisition proceedings not lapse under Section 24(2) of the 2013 Act; the appellant-writ petitioners have electricity bills which show that they continue to remain in possession even till date; and, in case this Court does not protect the interests of the appellant-writ petitioners in the interregnum, they are likely to be evicted from the subject land, which would cause them irreparable injury.

On the other hand, the learned Special Government Pleader, appearing on behalf of the learned Advocate General, would submit that the subject lands were acquired invoking the urgency Clause under Section 17(4) of the 1894 Act, after dispensing with the Section 5-A

enquiry; Section 17(4) of the 1894 Act was invoked only because there was an urgency to take possession of the subject land; the documents placed before the Learned Single Judge, by the learned Assistant Government Pleader, show that physical possession of the subject land has already been taken; the possession taken was not symbolic but actual and physical; while a few of the land owners may have subsequently encroached upon the subject lands, that would not amount to their retaining physical possession even after the 2013 Act came into force; 85% of the irrigation project has already been completed; if any interim order is passed, preventing the respondent-officials from completing the project, it would cause irreparable loss to the people of the State, and would contravene larger public interest; the learned Assistant Government Pleader had only sought three days time to file a counter; and, since the learned counsel for the appellant-writ petitioners had insisted that an order be passed, the Learned Single Judge had no alternative but to pass the order dismissing the WPMP.

It is evident, from the order under appeal, that it was passed at the insistence of the learned counsel for the appellant-writ petitioners that an order be passed even though no counter-affidavit was filed by the respondents. While the Learned Single Judge has taken note of the proceedings placed before him by the learned Assistant Government Pleader, the only finding recorded in the order under appeal is that the awards were passed in the year 2008, but were challenged after a period of nine years.

The Learned Single has not examined, nor could he have examined in the absence of a counter-affidavit, the question whether the possession, taken by the respondents, was physical or symbolic; it is only if physical possession is held not to have been taken, can the land acquisition

proceedings be said to have lapsed in view of Section 24(2) of the 2013 Act. In the absence of any findings being recorded in this regard by the Learned Single Judge, it would be wholly inappropriate for us to take upon ourselves the task of adjudicating the rival contentions on merits, that too for the first time in proceedings under Clause 15 of the Letters Patent.

The jurisdiction of this Court, in an intra-Court appeal under Clause 15 of the Letters Patent, is extremely limited, as the Learned Single Judge is not a Court subordinate. The Learned Single Judge passed the order, dismissing the WPMP, only because the learned counsel for the appellant-writ petitioners had insisted that an order be passed in the WPMP. The Learned Single Judge has not recorded any finding for us to hold that such findings suffer from a patent illegality. The mere fact that the Learned Single Judge has refused to grant the interim relief, as sought for by the appellant-writ petitioners, would not justify examination of the rival contentions, for the first time in proceedings under Clause 15 of the Letters Patent.

As a counter-affidavit, along with all documents, has since been filed by the respondent, and as the Learned Single Judge has not examined the matter on merits but has passed the order only on the insistence of the Learned Counsel for the petitioner, we consider it appropriate to set aside the order of the Learned Single Judge and restore the WPMP to file. As the learned counsel for the appellant-writ petitioners expresses urgency, suffice it to make it clear that we have not expressed any opinion on merits, or on the rival submissions as to whether or not actual physical possession of the subject land had been taken from the appellant-writ petitioners, and it is open to the Learned Counsel to request the Learned Single Judge to take up the WPMP early.

With the aforesaid observations, the Writ Appeal is disposed of.
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)

15th December, 2017

Note: Issue C.C tomorrow.

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Date: 15.12.2017