

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

WRIT APPEAL No.2000 of 2017

JUDGMENT: (per Hon'ble the Acting Chief Justice)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order dated 21.12.2017 passed by the learned Single Judge in WPMP.No.53061 of 2017 in W.P.No.42791 of 2017, whereby the Revenue Divisional Officer, Visakhapatnam Division, Visakhapatnam was directed to restore possession of the properties, to the 1st respondent Society, forthwith.

In the order under appeal, the learned Single Judge observed that, since the appellant had obtained possession of the assets of the 1st respondent's Society pursuant to order dated 12.08.2015 in M.C.No.5 of 2008 passed by the Revenue Divisional Officer, which order had been set aside by the Supreme Court in its order in Crl.A.No.1349 of 2017 dated 04.08.2017, it was incumbent on the part of the appellant to restore possession of the properties to the 1st respondent herein.

While it may not be necessary to refer to the facts in detail, suffice it to note that the 3rd respondent in the writ petition initiated proceedings under Section 145 Cr.P.C., which resulted in the order dated 12.08.2015 being passed, directing that the documents seized by the police, from the office of the

District Registrar, Visakhapatnam be handed-over to the Societies Registrar who, in turn, was directed to hand them over to the appellant and its Executive Body Members. The 1st respondent herein and other family members were held not to be the Members of the Society; and they were directed not to enter, and interfere in the activities of, the Societies. Aggrieved thereby, the President of the 1st respondent Society filed CrI.R.C.No.2381 of 2015 and, by order dated 21.11.2016, this Court dismissed the said Criminal Revision Case holding that initiation of proceedings, under Section 145 Cr.P.C., was in accordance with law.

Aggrieved thereby, the President of the 1st respondent Society carried the matter in appeal to the Supreme Court and, by order in CrI.A.No.1349 of 2017 dated 04.08.2017, the Supreme Court set aside the order of this Court granting liberty to the parties to avail such remedies as were available to them in law, in respect of the dispute pertaining to the management of the Society.

Thereafter, the Revenue Divisional Officer again exercised jurisdiction under Section 145 of Cr.P.C and, by order dated 29.09.2017, directed that the properties be taken over from the appellants, and be handed over to the President of the 1st respondent Society. The appellant filed CrI.P.No.9565 of 2017 to quash the order dated 29.09.2017 in M.C.No.5 of 2008, and

the said criminal petition was later dismissed as withdrawn by order dated 21.11.2017.

The Revenue Divisional Officer passed an order dated 25.11.2017 holding that the order, passed by him earlier on 29.09.2017, was contrary to the order of the Supreme Court; it was passed under a mistaken impression, and without understanding the purport of the order; since possession of the properties were taken from the appellant, while initiating proceedings under Section 145 Cr.P.C., the same were delivered to the appellant vide order dated 17.03.2017; and the appellant was in possession of the Society's properties. After noting that there was no direction, in the order of the Supreme Court, to deliver the properties to the 1st respondent Society, the Revenue Divisional Officer withdrew the order in M.C.No.5 of 2008 dated 29.09.2017.

While both Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellant, and Sri P. Venugopal, learned Senior Counsel appearing on behalf of the 1st respondent Society, would contend that the parties, whom they represent, are in possession of the subject properties, the order dated 25.11.2017 passed by the Revenue Divisional Officer indicates that possession of the subject properties were delivered to the appellant, by order dated 17.03.2017. A copy of the said order is, however, not available on record.

Be that as it may, even in the affidavit filed in support of W.P.No.42791 of 2017, the President of the 1st respondent Society has not asserted that the properties are in her possession. The learned Single Judge appears to have been under the mistaken impression that the properties were in possession of the 1st respondent-writ petitioner, when the order in M.C.No.5 of 2008 was passed on 12.08.2015.

In any view of the matter the order, directing restoration of possession of the properties, to the 1st respondent-Society by the appellant herein, could not have been passed without giving the appellant herein an opportunity of filing their counter affidavit, since the said order, in effect, would result in the main relief itself being granted at the stage of admission of the writ petition. The order under appeal is, therefore, set aside and WPMP.No.53061 of 2017 in W.P.No.42791 of 2017 is restored to file.

We, however, find considerable force in the submission of Sri P. Venugopal, learned Senior Counsel appearing on behalf of the 1st respondent-Society, that, in the light of the aforesaid disputes between the parties, the subject properties should be protected during the pendency of the writ petition. We consider it appropriate, therefore, to direct that neither the appellant nor the 1st respondent Society herein shall alienate the subject properties, create any third party rights thereupon or change the nature of the properties, pending further orders in the writ

petition. The order now passed by us shall be the interim order in the writ petition, and it is open to the appellant herein to seek vacation of the said order. In case any such petition is filed, the learned Single Judge shall consider the same on its merits without being influenced by any observations made in this order.

Subject to the aforesaid observations and directions, the Writ Appeal is disposed of. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.



RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

27.12.2017.
Msr

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
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27.12.2017
Msr