

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

WRIT APPEAL No.17 OF 2018

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri P. Veera Reddy, Learned Senior Counsel appearing on behalf of the appellant, and Sri B. Mayur Reddy, Learned Counsel appearing on behalf of the respondents-writ petitioners, and with their consent the Writ Appeal is disposed of at the stage of admission.

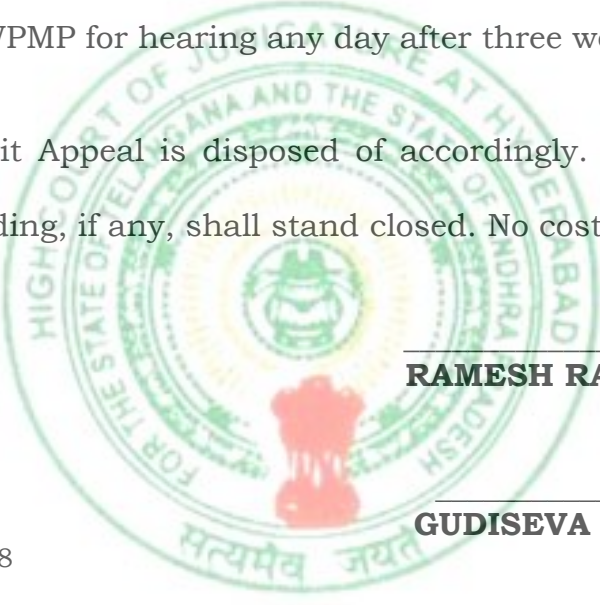
The respondent-writ petitioners sought a mandamus in W.P. No.42326 of 2017 to declare the action of the A.P. State Wakf Board in, unauthorisedly, preventing the petitioners from making construction on the land admeasuring Ac.0.56 cts in Sy. No.240 of Kowthalam village, Kurnool District, Andhra Pradesh, as arbitrary and illegal; and to direct the respondents not to interfere with the petitioner's rights over the said property. By way of interlocutory relief, the respondent-writ petitioners sought an interim direction to the A.P. Wakf Board not to prevent the petitioners from making constructions on their lands.

In effect, the interim order sought for is more or less identical to the main relief sought for in the Writ Petition. While the Writ Petition was filed on 13.12.2017, the fact that it came up for admission only on 20.12.2017 is not in dispute. On the very same day, on which the Writ Petition came up for admission, the interlocutory order under appeal was passed on the ground that, though papers were served a week earlier on 13.12.2017, the respondents had not produced proof to show that the subject land was gazetted as a wakf. It is evident that the appellant herein was not given a reasonable opportunity of filing their counter-affidavit, since the interim order was passed on the very same day on which it came up for admission. As the interim order under

appeal has the effect of allowing the Writ Petition itself at the stage of admission, and as such an order could, ordinarily, have been passed only after the respondents were given a reasonable opportunity of filing their counter-affidavit, contesting the respondents-writ petitioners claim of being entitled to make construction in the subject land, the order under appeal must be, and is accordingly, set aside.

The WPMP is restored to file. The appellant shall file their counter-affidavit, in the Writ Petition, within three weeks from today. It is open to Sri B. Mayur Reddy, Learned Counsel appearing on behalf of the respondent-writ petitioners, to request the Learned Single Judge to take up the WPMP for hearing any day after three weeks.

The Writ Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.



RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

Date: 04.11.2018

MRKR