

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.160 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in WPMP No. 46469 of 2017 in W.P. No. 37413 of 2017 dated 29.11.2017 whereby interim suspension, as prayed for, was granted. The interim relief sought for in the Writ Petition was to direct the Sub-Registrar, Giddalur, Prakasam District to receive and register the sale deed in respect of the respondent-writ petitioner's land, pending disposal of the Writ Petition.

The main relief sought for in the Writ Petition is for a mandamus to declare the action of the appellants-respondents, particularly the Sub-Registrar, in not receiving and registering the sale deed in respect of the respondent-writ petitioner's land as illegal, unjust, arbitrary, against the statutory provisions including GO Ms. No. 279 dated 4.7.2016; and to, consequently, direct the Sub-Registrar, Giddalur to receive and register the sale deed in respect of the respondent-writ petitioner's land. The effect of the interim order is that the main relief, sought for in the Writ Petition, has been granted.

While drawing our attention to the assignment patta granted in favour of the respondent-writ petitioner, Learned Government Pleader for Revenue (Assignment) would submit that it contains a specific clause for non-alienation; the assignment register does not disclose any such patta having been granted in favour of the respondent-writ petitioner; these facts could not be placed before the learned Single Judge, as the appellants were not granted a reasonable opportunity of

filing their counter-affidavit; and the order under appeal, therefore, necessitates being set aside.

On the other hand, Sri L.J. Veera Reddy, learned counsel for the respondent-writ petitioner, would submit that the respondent-writ petitioner was granted an assignment in the standard proforma; the fact that the respondent-writ petitioner is an Ex-serviceman is not in dispute; it is only as an Ex-serviceman, is the respondent-writ petitioner entitled to be granted assignment; otherwise he would be ineligible for grant of assignment; and the mere fact that standard proforma, of an assignment patta, was issued to the respondent-writ petitioner, does not dis-entitle him from enforcing his right, to alienate the assigned land, in terms of GO Ms. No. 279 dated 4.7.2016, ten years after the assignment.

The questions urged, by learned counsel on either side, before us can only be examined after the appellants file their counter-affidavit in this regard. Ordinarily interim relief, which is in the nature of the main relief sought for in the Writ Petition, is not granted without the appellants being given a reasonable opportunity of filing their counter-affidavit.

Sri L.J. Veera Reddy, learned counsel for the respondent-writ petitioner, would submit that when the Writ Petition came up for admission on 7.11.2017, three weeks time was granted to the appellants, to file their counter-affidavit; and their failure to do so, justified an interim order being passed by the learned Single Judge.

The Writ Proceedings Rules, 1977 require the respondents in the Writ Petition to file their counter-affidavit within six months; and it is only, thereafter, is leave of the Court required to be obtained for filing a counter-affidavit. We may not be understood to have held that, in each and every case, the appellants (respondents in the writ petition) are

entitled, as a matter of course, for six months time to file a counter-affidavit. All that we hold herein is that, failure to file a counter-affidavit within three weeks of the writ petition coming up for admission, may not justify granting an interim order which, in effect, would amount to allowing the Writ Petition itself.

We are satisfied, therefore, that the order under appeal must be set aside on this ground, and WPMP No. 46469 of 2017 should be restored to file. A counter-affidavit shall be filed on behalf of the appellants (respondents in the Writ Petition) within two weeks from today. It is open to Sri L.J. Veera Reddy, learned counsel for the respondent-writ petitioner, to request the learned Single Judge to take up the WPMP any day after two weeks from today.

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)

(KONGARA VIJAYA LAKSHMI, J)

6th February, 2018

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W.A. No. 160 of 2018

Date: 6.2.2018

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