

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.78 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 order passed by the learned Single Judge in WPMP No.49410 of 2017 in W.P.No.39850 of 2017 dated 27.11.2017.

The first respondent in this appeal filed the writ petition seeking a mandamus to declare the prohibitory lands list prepared and communicated by the Assistant Commissioner of Endowments in Annexure-III, under the purported exercise of the powers conferred under Section 22 (A)(1)(c) of the Registration Act, 1908, including the land of an extent of Ac.0.44 cents from out of Acs.2.89 cents in Survey Nos.1143/A and 1143/B of Galiveedu Village, Galiveedu Mandal, YSR District, as endowment land; and the consequential action of the sub-registrar in refusing to entertain the sale deeds for registration, as illegal and arbitrary. A consequential direction was sought to the Sub-Registrar to entertain the sale deeds for registration of the land, by setting aside the prohibitory lands list and Annexure-III communicated by the Assistant Commissioner of Endowments. By way of interlocutory relief, a direction was sought to the Sub-Registrar to entertain the sale deeds for registration of the land in an extent of Ac.0.44 cents from out Acs.2.89 cents in survey Nos.1143/A and 1143/B of Galiveedu Village, without reference to the proceedings in the prohibitory lands list.

In the order under appeal, the learned single Judge observed that, *prima facie*, the Assistant Commissioner of Endowments lacked jurisdiction to notify the Sub-Registrar not to register the subject property under Section 22-A of the Registration Act, and pending

further orders there shall be interim direction as prayed for. The Sub-Registrar was directed to register the subject document strictly in accordance with the Indian Stamp Act, 1869, and the Registration Act, 1908, within six weeks. Aggrieved thereby, the present appeal.

Learned Government Pleader for Endowments would draw our attention to the letter dated 06.10.2016, addressed by the Commissioner of Endowments to the Commissioner & Inspector General of Stamps & Registration Department, wherein reference is made to the order of a Division Bench of this Court in W.A.No.343 of 2015 & batch dated 23.12.2015. In the said order, the Division bench is said to have directed that the lists of landed properties, owned by Charitable and Religious Institutions falling under the purview of Andhra Pradesh Charitable & Religious Institutions and Endowments Act, 1987, should be signed by the Commissioner of Endowments, and furnished to the Commissioner & Inspector General of Stamps & Registration for prohibition of registration of such properties under Section 22 (a) (1) (c) of the Registration Act. The said letter dated 06.10.2016 also records that, as per the guidelines issued by Circular memo dated 14.09.2007, the Commissioner of Endowments had included particulars of the landed properties, of agriculture and non-agriculture lands, belonging to the charitable and Religious Institutions in YSR Kadapa District.

According to the learned Government Pleader, Annexure-III to the said letter dated 06.10.2016 includes the subject lands. On the other hand Sri V.R.Reddy Kovvuri, learned counsel for the respondent-writ petitioner would submit that the list forwarded by the Commissioner does not include the subject land; and Annexure-III, on which reliance

is placed by the learned Government Pleader, is not an enclosure to the letter of the Commissioner dated 06.10.2016.

The rival submissions of Learned Counsel on either side are all matters which ought to have been examined by the learned Single Judge before the interim order under appeal came to be passed. It is necessary to note that the main relief sought for in the writ petition is to declare the action of the Assistant Commissioner, in addressing a letter to the Commissioner & Inspector General of Stamps to include certain lands in the prohibitory lands list, as arbitrary and illegal. It is only if the main relief is granted, and the subject lands are deleted from the prohibitory lands list, can they then be subjected to registration by the Sub-Registrar. The relief which could only have been granted, on the writ petition being allowed and the main relief granted, has been granted by way of an *ad interim* order. Such an order would, ordinarily, not be passed without giving the appellants an opportunity of being heard. While the writ petition was filed on 20.11.2017, the interim order under appeal came to be passed just one week thereafter on 27.11.2017. It is evident, therefore, that the appellants herein were not afforded a reasonable opportunity of filing a counter affidavit in the writ petition.

We consider it appropriate, under these circumstances, to set aside the order under appeal and restore WPMP No.49410 of 2017 to file. The appellants shall file their counter affidavit within two weeks from today. It is open to Sri V.R.Reddy Kovvuri, learned counsel for the respondent-writ petitioner, to request the learned Single Judge to take up the W.P.M.P. any day after two weeks from today. We have no reason to doubt that, on any such request being made, the learned Single Judge would give such a request its due consideration.

The Writ Appeal stands disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J.)

24th January, 2018
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