

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

Writ Appeal No. 339 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 W.P. No. 38331 of 2017 dated 15.11.2017. The respondent herein filed the said Writ Petition seeking a mandamus to declare the Endorsement dated 12.7.2017 as illegal and arbitrary.

Facts, to the limited extent necessary, are that W.P. No. 31342 of 2016 was filed earlier contending that, though an application dated 8.9.2015 was filed for survey and demarcation of the property, no action was taken by the Tahsildar. The said Writ Petition was disposed of by order dated 19.9.2016 directing the Tahsildar to dispose of the petitioner's application dated 8.9.2015, and to take action within a period of four weeks from the date of receipt of a copy of the order. Thereafter, the respondent-writ petitioner filed W.P. No. 17954 of 2017 to declare the inaction of the Principal Secretary, Revenue, and the District Collector, East Godavari, in passing appropriate orders on his representation dated 17.5.2017, as arbitrary and illegal. The learned Single Judge disposed of the said Writ Petition, by order dated 6.6.2017, granting the respondent-writ petitioner liberty to re-submit the representation dated 17.5.2017 along with a copy of the order to the District Collector, East Godavari who was directed to afford the respondent-writ petitioner an opportunity, examine the record, take a decision, and communicate the same to the respondent-writ petitioner, within two months.

Thereafter the Tahsildar, Rajanagaram Mandal issued endorsement dated 12.7.2017 wherein he noted that the respondent-writ petitioner had failed to produce document of ownership in support of his claim to own the subject land or to establish his possession. Keeping in view the fact that there was an ownership dispute prevailing among others, the Tahsildar opined that, in the absence of documentary evidence of ownership and physical possession, it was not possible to entertain any mutation in the revenue records. The Tahsildar observed that, as it was a case of an ownership dispute, until and unless the claimants proved their rightful ownership by approaching the competent Civil Court, no mutation of ownership could be entertained by him. It is this order dated 12.7.2017 which was questioned in W.P. No. 38331 of 2017 wherein a mandamus was sought to declare this endorsement dated 12.7.2017 as arbitrary and illegal.

It was not even the respondent-writ petitioner's case that the earlier order in W.P. No. 17954 of 2017 dated 6.6.2017 had not been complied with by the District Collector. The learned Single Judge, however, observed in the order under appeal that the District Collector had failed to pass any order as directed in W.P. No. 17954 of 2017 dated 6.6.2017, and called upon the District Collector to show cause why proceedings for Contempt of Court should not be initiated against him. Thereafter, the District Collector also passed an order on 23.12.2017 informing the respondent-writ petitioner of the fact that the subject land was not being used for agricultural purposes and, as such, his name could not be mutated in the revenue records.

The order, directing the District Collector to show cause why proceedings should not be taken against him under the Contempt of Courts Act, was issued at the stage of admission of the Writ Petition. While the Writ petition was filed on 8.11.2017, the order under appeal

came to be passed a week thereafter ie on 15.11.2017, without the appellants being given a reasonable opportunity of filing their counter-affidavit in the Writ Petition. The order under appeal is set aside on grounds that the said order came to be passed even before the appellants could file their response, the relief sought for in the Writ Petition is only to set aside the endorsement of the Tahsildar dated 12.7.2017, and the inaction of the District Collector has not even been questioned in the said Writ Petition.

Suffice it to make it clear that W.P. No. 38331 of 2017 shall be heard on its merits without being influenced by any observations made by us in this order. 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)

5th March, 2018

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