

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No.66 of 2018

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

Heard Sri N. Sreedhar Reddy, learned counsel for the appellant-6th respondent, and Sri R.N.V.S.K. Acharyulu, learned counsel for the respondent-writ petitioner. This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in WPMP No. 49748 of 2017 in W.P. No. 40109 of 2017 dated 15.12.2017. The respondent-writ petitioner herein filed W.P. No. 40109 of 2017 seeking a mandamus to declare the Possession Certificate dated 21.6.2017, issued by the Tahsildar in favour of the appellant-6th respondent, as illegal, arbitrary, contrary to the procedure and in violation of the principles of natural justice. A consequential direction was sought to the Tahsildar to follow the procedure, restore the order passed by the 3rd respondent on 8.11.2016, and direct the 5th respondent to ensure that no construction was carried on in the subject site. By way of interlocutory relief, the petitioner sought a direction to the Tahsildar to follow the procedure, restore the order passed by the Revenue Divisional Officer dated 8.11.2016, and direct the Station House Officer to ensure that the construction was not proceeded with.

In the order under appeal, the learned Single Judge observed that since, admittedly, the subject land was gramakantam land, and such land is not Government land, the Tahsildar has no jurisdiction to issue an Occupancy Certificate/patta to the appellant-6th respondent for the said land. The Tahsildar was

directed to cancel the Occupancy Certificate/patta and to evict the appellant-6th respondent by following due process of law within two weeks from the date of receipt of a copy of the order.

This interlocutory order which, in effect amounts to allowing the Writ Petition itself, was passed at the stage of admission without giving an opportunity to the appellant-6th respondent to file her counter-affidavit. Sri N. Sreedhar Reddy, learned counsel for the appellant, would draw our attention to the averments in the Writ Petition that the subject land is Government land. On the other hand Sri R.N.V.S.K. Acharyulu, learned counsel for the 1st respondent-writ petitioner, would draw our attention to the proceedings of the Tahsildar to contend that the subject land is gramakantam land. The fact, however, remains that the order under appeal came to be passed at the stage of admission without giving the appellant an opportunity to file her counter-affidavit.

The question whether the subject land is Government land or gramakantam land can only be examined after the respondent-authorities file their counter-affidavit. If the subject land is Government land, as contended by Sri N. Sreedhar Reddy, assignment of such land to the appellant who, according to the learned counsel, is a landless poor person, may well be justified. In any event, these are all matters which necessitate examination in the WPMP after the appellant and the respondent-authorities file their respective counter-affidavits.

We consider it appropriate, in such circumstances, to set aside the order under appeal, and restore the WPMP to file. The appellant and the respondent-authorities shall, within two weeks from today, file their counter-affidavit. It is open to Sri R.N.V.S.K.

Acharyulu, learned counsel for the respondent-writ petitioner, to request the learned Single Judge to take up the WPMP for hearing any day after two weeks.

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)

(M. GANGA RAO, J)

24th January, 2018

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Date: 24.1.2018

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