

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO**

Writ Appeal Nos.422 and 480 of 2016

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

Both these appeals, under Clause 15 of the Letters Patent, are preferred against the order passed by the Learned Single Judge in W.P.No.9353 of 2016 dated 04.04.2016. The respondents in the Writ Petition are in appeal against the order of the Learned Single Judge. The first respondent herein filed the Writ Petition to declare the action of the respondents in not conducting enquiry as directed by the Revenue Divisional Officer in 2010 and for taking coercive steps to illegally demolish the structure raised by the petitioner, as arbitrary and illegal.

A possession certificate was issued to the petitioner by the Mandal Tahsildar on 10.07.2008, based on which he was sanctioned a house under Indiramma Housing Scheme on 16.10.2008. The petitioner claims to have completed construction in the year 2010. On the ground that the construction was made in a graveyard/burial ground, the Mandal Tahsildar passed an order on 23.06.2010 canceling the possession certificate issued to the petitioner on 10.07.2008. Questioning the said order passed by the Mandal Tahsildar, the petitioner preferred an appeal before the Revenue Divisional Officer on 05.07.2010. The Revenue Divisional Officer initially granted stay of cancellation of the possession certificate issued in favour of the petitioner, and directed a survey to be conducted by the Tahsildar, so that subdivision could be made in the Field Measurement Book. The

Revenue Divisional Officer passed a final order on 28.02.2016 dismissing the said appeal without marking a copy thereof to the petitioner. Based on the said order of the Revenue Divisional Officer, the subject building, constructed by the petitioner, was demolished. When the Writ Petition came up for admission on 21.03.2016 an interim order of status-quo is said to have been passed by the Learned Single Judge. Thereafter, by the order under appeal dated 04.04.2016, the Writ Petition was allowed directing respondents 3 to 5 (the Revenue Divisional Officer, Guntur Revenue Division, the Mandal Tahsildar, Pedanandipadu Mandal, and the Panchayat Secretary, Pedanandipadu Grampanchayat) to rebuild the structure erected by the petitioner in the subject property within a period of three months and, in addition, to pay costs of Rs.10,000/- each to the petitioner within two weeks.

While a counter-affidavit appears to have been filed by the 5th respondent (Panchayat Secretary), no counter-affidavit was filed on behalf of respondents 1 to 4. The Learned Single Judge has, in the order under appeal, observed that no counter-affidavit was filed by the respondents even though the matter was adjourned from 21.03.2016 to 31.03.2016, and thereafter to 01.04.2016 for filing the counter-affidavit. The order under appeal was passed on 04.04.2016 less than two weeks after the Writ Petition came up for admission on 21.03.2016. Within this period of 13 days, the Learned Single Judge initially granted 10 days time in the first instance to file counter-affidavit, and thereafter adjourned it to the very next day i.e. 01.04.2016 for a counter-affidavit to be filed. On the short ground that the appellants were not afforded a

reasonable opportunity of being heard by filing a counter-affidavit, the order under appeal must be set aside.

Sri K.S.Murthy, Learned Counsel for the 1st respondent-writ petitioner, would submit that the order, impugned in the Writ Petition, was passed by the Revenue Divisional Officer without even putting the 1st respondent-writ petitioner on notice of the date of hearing of the appeal; the 1st respondent-writ petitioner was kept in the dark regarding an order being passed by the Revenue Divisional Officer, as a copy thereof was not even marked to him; it is based wholly on this order that the exercise of demolition of the structure was undertaken; and since the action of the authorities concerned, in demolishing the structure raised by the 1st respondent-writ petitioner, is ex-facie illegal, the Learned Single Judge was justified in directing that the building be reconstructed within a specified time frame.

While this Court undoubtedly has the power under Article 226 of the Constitution of India to direct restitution or to compensate the person aggrieved by way of damages for any illegal acts of the authorities concerned, if the circumstances of the case so warrant, any such order could only have been passed after the officials concerned were given a reasonable opportunity of filing their counter-affidavit. We are satisfied that the time granted of less than two weeks, from the date on which the Writ Petition came up for admission, for filing counter-affidavit was wholly insufficient. On this short ground, the order under appeal is set aside, and the Writ Petition is restored to file. The interim order passed, during the pendency of the Writ Petition, shall continue to remain in force till the Writ Petition is finally heard and disposed

of, after the respondents (appellants herein) file their counter-affidavit. All questions, including restitution or compensation by way of damages, for the alleged illegal acts of any of the appellants, shall also be examined by the Learned Single Judge when the Writ Petition is taken up for hearing.

Learned Government Pleader for Revenue seeks three weeks time to file a counter-affidavit. It is open to Sri K.S.Murthy, Learned Counsel for the 1st respondent-writ petitioner, to request the Learned Single Judge to take up the Writ Petition for hearing any day after three weeks.

With the aforesaid directions, both the Writ Appeals are disposed of. The 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)

Date: 18th January, 2018.
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