

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.816 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Mangena See Rama Rao for appellant, learned Government Pleaders for Social Welfare, Home & Revenue and Mr.K.Venkatesh for 1st respondent.

The writ appeal is at the instance of 5th respondent in W.P. No.35773 of 2016. The 1st respondent herein filed W.P. No.35773 of 2016 for a writ in the nature of Mandamus declaring the action of respondents 3 and 4 in seeking to dispossess the petitioner from Acs.5-44 cents in Survey No.81 at Mohanapuram, Gangavaram (Agency) Mandal, East Godavari District, without recourse to law, as illegal and unconstitutional.

On 24.10.2016, W.P. No.35773 of 2016 was disposed of. The direction against which the appeal is maintainable reads thus:

“Considering the rival submissions made by both the counsel, the writ petition is disposed of with a direction to the respondents 3 and 4 not to interfere in the civil disputes between the petitioner and the fifth respondent and also not to dispossess the petitioner from the subject land without following due process of law. “

Mr.See Rama Rao contends that the writ petition ought not to have been disposed of at the stage of admission without notice

to the appellant herein. Further there ought not to have been a direction to respondents not to dispossess writ petitioner/1st respondent herein from the subject land without following due process of law, particularly without considering the pendency of civil suit between the parties and without recording a finding on possession. He further contends that the portion excerpted above is misused by 1st respondent and is trying to dispossess the appellant herein. Hence, the appeal.

The learned counsel appearing for the respondents could not dispute the grievance of appellant viz. that the writ petition has been disposed of without notice to appellant herein.

We have perused the record and particularly note that O.S. No.18 of 2016 is pending before the Court of competent jurisdiction in Rampachodavaram. We are of the view that disposing writ petition, without notice to appellant herein and also further issuing a direction to respondents not to dispossess 1st respondent herein without recourse to law etc. is untenable. The counsel consent to setting aside the order under appeal and restore the writ petition to file and the writ petition can be heard and disposed of on merits.

Having regard to above circumstances, the order under appeal is set aside. The writ petition is restored to file and the Registry is directed to list the writ petition on 19.11.2018. The appellant is given liberty to file counter affidavit within four weeks from the date of receipt of copy of this order.

The writ appeal is ordered as indicted above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date: 29.10.2018
Sp

