THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.515 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.M.P.No.51711 of 2017 in W.P.No.41686 of 2017 dated 27.12.2017. Respondents 1 and 2 herein filed W.P.No.41686 of 2017 seeking a mandamus to declare the action of the respondents therein in including their land, admeasuring Ac.4.22 guntas in Survey No.394/1 of Amrutapuram Village, Sabbavaram, Visakhapatnam District, in the prohibitory list maintained in the Sub-Registrar Office, Sabbavaram Mandal, and in refusing to register the document in respect of the said land on the ground that it is Government land, as illegal, arbitrary and in violation of Article 300-A of the Constitution of India. A consequential direction is sought to the respondents in the writ petition to delete the respondents-writ petitioners' land from the prohibitory list maintained in the Sub-Registrar Office, Sabbavaram Mandal. By way of interim relief, the respondents-writ petitioners sought a direction to suspend operation of entry of their land in the prohibitory list, maintained in the Sub-Registrar's Office, Sabbavaram, pending disposal of the writ petition.

In the order under appeal, the Learned Single Judge noted the submission of the respondents-writ petitioners that they were the owners of the subject land; it was their private property, and they had obtained the same, under an agreement of sale-cum-GPA dated 23.01.2007, from their previous owner who obtained it under a registered gift deed dated 03.02.2006 executed in her favour by her husband; they had also placed reliance on the certificate dated 08.06.2009 issued by the Tahsildar certifying the title of the respondents-writ petitioners; the letter dated

18.02.2006 addressed by the Tahsildar, Sabbavaram Mandal to the Sub-Registrar, Sabbavaram showed that the subject land is zeroity agricultural land; and they had also relied on a letter dated 31.08.2009 of the Special Revenue Inspector, addressed to the Tahsildar, Sabbavaram, that the subject land was zeroity land, apart from the title deed issued to the respondents-writ petitioners' predecessor in title on 12.08.2001 in respect of the subject land.

Having noted the submission of the learned Government Pleader, that, in the Settlement Fair Adangal, the subject land was mentioned as 'gayalu', the Learned Single Judge observed that it was not known how such entry could be made when the land was certified as private land by the Tahsildar in more than one proceedings, and when pattadar pass book and title deeds had also been issued to the respondents-writ petitioners' predecessor in title. After expressing his, prima facie, view that the contention, of the subject land being Government land, could not be accepted, the Learned Single Judge directed the Sub-Registrar to receive the document presented by the respondents-writ petitioners for the purpose of registration, and to register it in accordance with the provisions of the Registration Act, 1908 and the Indian Stamp Act, 1899 within a period of four weeks of presentation of the documents by the respondents-writ petitioners, without reference to any communication received by him from the Tahsildar or the District Collector under Section 22-A of the Registration Act, 1908. The Learned Single Judge further observed that such registration shall be subject to the result of the writ petition.

Learned Government Pleader for Revenue (Assignment) would draw our attention to the proceedings of the Revenue Divisional Officer (Appellate Authority under the Record of Rights in Land and Pattadar Pass Books Act, 1971) dated 12.04.2016 to submit that the earlier certificate issued by the Tahsildar has been set aside. He would further submit that the Learned Single Judge had erred in granting an interim relief which was not even sought for by the respondents-writ petitioners; the relief granted by the order under appeal, was the main relief which could have been granted in the writ petition; and since this order was passed without giving the appellants a reasonable opportunity of being heard, the order under appeal necessitated being set aside.

On the other hand, Sri S.Sridhar, learned counsel for the respondents-writ petitioners, would draw our attention to a notification published in the Gazette of India dated 19.10.2016, by the National Highways Authority, under Section 3-A(1) of the National Highways Act, 1956 proposing to acquire the land in Survey No.394/1, to submit that the subject land was shown therein as private patta land; and the order of the Revenue Divisional Office dated 12.04.2016 is, therefore, illegal. He would further submit that the interim order under appeal came to be passed three weeks after the writ petition was filed, and there was no justification for the failure of the appellants to file a counter-affidavit within three weeks.

As noted hereinabove, the interim relief sought for by the respondents-writ petitioners is only to suspend operation of the entry whereby the respondents-writ petitioners' land was included in the prohibitory list maintained in the Sub-Registrar's office. They did not even seek an interim order to direct the Sub-Registrar to receive and register the document presented by them for registration. The Learned Single Judge has, by the order under appeal, granted them an interim relief which they had not even sought in the writ petition. Further, the interim order under appeal has, in effect, resulted in the main writ petition itself being allowed, in as much as the relief granted by the order under appeal is the main relief which could have been granted even if the writ petition were to be allowed when it is finally heard.

In as much as the interim relief granted goes even beyond the interim relief sought for by the respondents-writ petitioners, the order under appeal must be, and is accordingly, set aside and the WPMP is restored to file. While it does appear, from the proceedings of the Revenue Divisional Officer dated 12.04.2016, that the pattadar pass books and title deeds issued, with respect to the subject land by the Mandal Revenue Officer holding that the subject land was zeroity land, was cancelled on the ground that the subject land was Government land, it is wholly unnecessary for us to record any finding on either this contention or the contention of Sri S.Sridhar, learned counsel for the respondents-writ petitioners, that the notification published in the Gazette of India on 19.10.2016, shows these lands as private patta lands, as no reference is made to such proceedings in the affidavit filed in support of the writ petition.

Suffice it to observe that it is always open to the respondents-writ petitioners to file an additional affidavit in the writ petition bringing these facts to the notice of the Learned Single Judge. The appellants shall file their counter-affidavit in the Writ Petition within three weeks from today. It is open to Sri S.Sridhar, learned counsel for the respondents-writ petitioners, to request the Learned Single Judge to take up the WPMP for hearing any day after three weeks.

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

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

28th March, 2018
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.515 OF 2018

Date: 28.03.2018

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