

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

WRIT APPEAL No.446 OF 2018

JUDGMENT: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The appellants herein were not arrayed as respondents in W.P. No.4884 of 2018. It is not in dispute that the subject lands are endowment lands, and the petitioners are in possession thereof. The only question which necessitates examination is whether a mandamus could have been issued to the official respondents to remove the encroachments, without the appellant being heard in the matter.

Smt. Valdimeer Khatoon, Learned Counsel for the respondent-writ petitioner, would submit that, since the appellants have filed an application to implead themselves in the Writ Petition along with a counter-affidavit, they should be relegated to avail the remedy of seeking vacation of the interim order before the Learned Single Judge; and an appeal, under Clause 15 of the Letters Patent, is not maintainable. We must express our inability to agree.

The jurisdiction, under Clause 15 of the Letters Patent, can be exercised where substantial injustice is caused by the order under appeal, or in cases where the order under appeal suffers from a patent illegality. The effect of the order under appeal is that the buildings, constructed by the appellants in the subject land, can be demolished today, since the notice issued to them on 24.02.2018, giving them fifteen days time, expires today. Relegating the appellants to the remedy of impleading themselves in the Writ Petition, and filing a petition to vacate stay, may well result in the buildings, in which they

are residing in, itself being demolished even though the appellants have not even been arrayed as respondents in the Writ Petition; and have, admittedly, not been given an opportunity of being heard, before the order under appeal was passed by the Learned Single Judge. While we were initially inclined to dispose of the Writ Petition, directing the appellants to submit their reply to the show cause notice within a specified time-frame, and to permit the concerned authorities to take action thereafter, Smt. Valdimeer Khatoon, Learned Counsel for the respondent-writ petitioner, expresses her disinclination for the Writ Petition to be disposed of, and would submit that the Writ Petition should be heard by the Learned Single Judge.

In such circumstances, we consider it appropriate to set aside the order under appeal, and restore I.A. No.1 of 2018 to file. Needless to state that I.A. No.1 of 2018 in W.P. No.4884 of 2018, and the application filed by the appellants to implead them as respondents, shall be heard together and adjudicated on its merits without being influenced by the order now passed by us.

The Writ Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 13.03.2018

MRKR