

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

Writ Appeal No.561 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.No.27071 of 2017 dated 15.11.2017. This Writ Petition, along with several others, were disposed of by a common order dated 15.11.2017.

The action of the 4th appellant, in issuing notices under Sections 7 and 6 of the Land Encroachment Act on 13.07.2017 and 04.08.2017 respectively, was questioned in the Writ Petition as being illegal, irregular, ultra-vires and to suffer from non-application of mind. A consequential direction was sought to set aside the same in the interest of justice.

In the order under appeal, the Learned Single Judge observed that, in reply to the notice issued under Section 7 of the Land Encroachment Act, the petitioners had filed their reply to the show cause notice on 28.07.2017 contending that the subject lands were acquired by the petitioner's grand-father more than 50 years ago; the subject land was in the occupation of the petitioner's family ever since; and, without adverting to this contention, the impugned order came to be passed. The Learned Single Judge further observed that, in the counter-affidavit, it was stated that, on the oral orders issued by the MLA, Unguturu assembly, action was initiated. On the ground that the Tahsildar had not applied his mind independently, and had acted under the

dictation of the MLA, the order impugned in the Writ Petition was set aside. Yet another reason which weighed with the Learned Single in setting aside the impugned order was that the order was bereft of reasons.

While the Learned Single Judge was justified in setting aside the order on these grounds, the appellants are aggrieved by the direction issued to the State to file appropriate proceedings before the competent Civil Court for recovery of possession of the subject land. While proceedings under the Land Encroachment Act are, no doubt, summary, the provisions of the said Act are applicable to encroachments over Government land.

Suffice it, in such circumstances, to set aside the order under appeal to the extent the appellants were directed to approach the competent Civil Court, and to direct the 4th appellant to pass a reasoned order afresh, and in accordance with law, taking into consideration the objections put forth by the respondent-writ petitioner in their letter dated 28.07.2017 uninfluenced by any directions issued by the MLA or any other official.

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: 04.04.2018
MRKR

