

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No. 593 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 interim order passed by the learned Single Judge in W.P. No. 10964 of 2018 dated 4.4.2018, whereby status-quo as on that day was directed to be maintained by the respondents in all respects, in respect of the subject property, for a period of three weeks; and, as the order of the Commissioner of Appeals, Office of the Chief Commissioner of Land Administration, State of Andhra Pradesh dated 11.1.2018 was under challenge in W.P. No. 3089 of 2018, W.P. No. 10964 of 2018 should be posted along with W.P. No. 3089 of 2018.

The present case has had a chequered history. The very same petitioners had earlier filed W.P. No. 17474 of 2017 to declare the action of the District Collector, Machilipatnam in issuing proceedings dated 27.5.2017, cancelling the assignment pattas granted in their favour in the year 2004, as arbitrary and illegal. The said Writ Petition was disposed of by order dated 2.6.2017 giving them liberty to avail the remedy of an appeal to the Commissioner of Appeals within two weeks from the date of receipt of a copy of the order. The order of the District Collector was suspended for a period of four weeks. The learned Single Judge observed that, if the petitioners preferred an appeal along with an application for grant of interim relief, the Commissioner of Appeals should pass an order, on the said application, before expiry of the period of four weeks of suspension granted by the Court. The respondent-writ petitioners, thereafter, preferred an appeal to the Commissioner of Appeals who, by his order dated 11.1.2018, dismissed the appeal.

In the said order, the Commissioner of Appeals recorded that possession of the subject land was with the revenue department; the land was within the limits of Jaggaiahpet Municipality; the market value of the land was in square yards as per the Registration Department; in the instant case, grant of assignment itself was in violation of the provisions of BSO 15(18); the assignees were not cultivating the lands from the date of assignment; the lands were not fit for cultivation; and the appellants were assigned these lands under mistake of fact.

Aggrieved thereby, the respondent-writ petitioners herein filed W.P. No. 3089 of 2018 wherein the Chief Commissioner of Land Administration, the District Collector, the Revenue Divisional Officer, and the Tahsildar were arrayed as respondents besides the Jaggaiahpet Municipality and the State of Andhra Pradesh represented by its Principal Secretary, Revenue. In the said Writ Petition, the respondent-writ petitioners sought a mandamus to declare the action of the Commissioner of Appeals, in dismissing their appeal by order dated 11.1.2018 confirming the order of the District Collector dated 27.5.2017, as arbitrary and illegal; and, consequently, to set aside both these orders. By way of interim relief, the respondent-writ petitioners sought a direction to the respondent-authorities not to dispossess them from their respective lands, situated in Jaggaiahpet, by suspending the said orders of the District Collector dated 27.5.2017 and the Commissioner of Appeals dated 11.1.2018. Though W.P. No.3089 of 2018 was admitted, it is not in dispute that no interim order was passed therein.

In para-10 of the affidavit, filed in support of W.P. No. 3089 of 2018, the respondent-writ petitioners, while referring to the fact that the Commissioner of Appeals had passed the order dated 11.1.2018,

had contended that a news item had been published on 30.1.2018 to the effect that the Tahsildar had handed over possession of the subject land, to the Commissioner, Jaggaiahpet Municipality, for the purpose of construction of houses; they had approached the Tahsildar, and had obtained xerox copies of the order of the Commissioner of Appeals; and had, thereafter, preferred the Writ Petition. They also expressed their apprehension that the authorities could, at any time, dispossess them from their land; and the action of the authorities, in issuing the impugned proceedings cancelling the assignment, was illegal and arbitrary. Despite the apprehension expressed by the respondents-writ petitioners, of the possibility of their being dispossessed, no interim order was passed in the said Writ Petition.

Curiously, the respondent-writ petitioners filed W.P. No. 10964 of 2018 thereafter to declare the action of the Jaggaiahpet Municipality in initiating construction activity in respect of the subject lands, without taking possession from the petitioners by following the due process of law, as arbitrary and illegal; and to consequently direct the respondents not to enter their land for any purpose, including for any construction through any contractor, workers etc. By way of interim relief, they sought a similar direction to the Jaggaiahpet Municipality. On the interim relief of *status quo* being granted, this appeal has been preferred by the Jaggaiahpet Municipality.

Learned Advocate General, for the State of Andhra Pradesh, would submit that, having failed to secure any interim order in W.P. No. 3089 of 2018, the respondent-writ petitioners had filed W.P. No. 10964 of 2018 only to obtain an interim relief which they were not able to secure in W.P. No. 3089 of 2018; and while the respondent-writ petitioners had specifically asserted, in the earlier Writ Petition, that there was a news item that the Tahsildar had handed over possession of

the subject land to the Jaggaiahpet Municipality, in the present Writ Petition, they have chosen not to array any of the revenue officials, including the District Collector, the Revenue Divisional Officer and the Tahsildar, as parties to the Writ Petition to enable this Court to ascertain whether or not the revenue officials had handed over possession of the subject land to the municipality in accordance with law and, if so, when.

On the other hand, Sri K.S. Murthy, learned counsel for the respondent-writ petitioners, would submit that, while the earlier Writ Petition was filed questioning the order of the Commissioner of Appeals (in the Office of the Chief Commissioner of Land Administration), affirming the order of the District Collector cancelling the assignment pattas granted in favour of the respondent-writ petitioners, the present Writ Petition was limited only to possession of the land being taken illegally by the Jaggaiahpet Municipality; and, since the respondent-writ petitioners had not suppressed the fact that they had filed W.P. No. 3089 of 2018 earlier, the order of the learned Single Judge does not necessitate interference, more so when the learned Single Judge had granted interim relief only for a period of three weeks.

The fact that these lands are assigned lands is admitted. It is not in dispute that the assignment was cancelled by the District Collector, whose order was affirmed by the Commissioner of Appeals, and both these orders are under challenge in W.P. No. 3089 of 2018, which is pending on the file of this Court. It is also not in dispute that no interim order was passed in the said Writ Petition. Possession of the land could only have been delivered to the Municipality by the concerned revenue officials, and it is only they who could have stated when possession of the subject lands were handed over, and regarding the procedure followed by them in delivering possession of the subject

lands to the Municipality. None of these revenue officials (the District Collector, the Revenue Divisional Officer and the Tahsildar) are even arrayed as respondents in W.P. No.10964 of 2018, though it is they alone who could have explained how possession of the subject lands were handed over to the Municipality. It does appear that the revenue officials were not arrayed as respondents in W.P. No.10964 of 2018 only to secure an order, which the respondent-writ petitioners were not granted in W.P. No. 3089 of 2018 filed by them earlier.

While we find no error in the order of the learned Single Judge directing that W.P. No.10964 of 2018 be listed along with W.P. No. 3089 of 2018, no interim order could have been passed in W.P. No.10964 of 2018 as the respondent-writ petitioners were not granted any interim relief in W.P. No. 3089 of 2018 filed by them earlier. The order under appeal is set aside. Needless to state that W.P. No. 3089 of 2018 and W.P. No. 10964 of 2018 shall be heard together by the learned Single Judge on its merits uninfluenced by any observations made by us in this order.

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

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

12th April, 2018

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AND
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Date:12.04.2018

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