

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.1438 of 2017

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. 18622 of 2017 dated 30.8.2017. Respondents 6 to 9 are members of the Scheduled Tribes. The appellant-writ petitioner is, admittedly, not a member of the Scheduled Tribes. An order was passed, in GO Ms. 43 dated 7.10.2016, directing eviction of the appellant-writ petitioner from the subject land. Thereafter a panchanama was conducted, and the property was delivered to respondents 6 to 9 on 27.10.2016. The appellant herein filed W.P. No. 35276 of 2016 questioning the validity of GO Ms. No.43 dated 7.10.2016. While notice was ordered by the learned Single Judge on 18.10.2016, no interim order was passed in the said Writ Petition.

However, with respect to the very same land, another person filed W.P. No. 36277 of 2016. While Sri P.V. Ramana, learned counsel for respondents 6 to 9, would submit that the petitioner in W.P. No. 36277 of 2016 i.e Mr. Nandulal Agarwal is a partner of the appellant, Sri K.G. Krishna Murthy, learned Senior Counsel appearing on behalf of the appellant, would vehemently deny this allegation.

Be that as it may, since no interim order was passed on 18.10.2016 in W.P. No. 35276 of 2016, possession of the subject property was delivered to respondents 6 to 9 on 27.10.2016. Thereafter, W.P. No. 35276 of 2016 came to be listed on 4.11.2016; and as an interim order of suspension was passed in W.P. No. 36277 of 2016 on 27.10.2016, a similar interim order was passed, in W.P. No. 35276 of 2016, on 4.11.2016. The interim order granted on 4.11.2016 was extended by order

dated 16.12.2016. Thereafter, respondents 6 to 9 herein filed WPMP No. 55728 of 2016 in W.P. No. 35276 of 2016; and, in his order dated 29.12.2016, the learned Single Judge noted that the learned counsel appearing for the 6th respondent had submitted that possession of the subject lands was taken by way of a panchanama, and the order of interim suspension dated 4.11.2016 should be modified as an order of status-quo. By the order in WPMP No. 55728 of 2016 dated 29.12.2016, the learned Single Judge directed parties to maintain status-quo with respect to the subject lands.

The appellant herein filed W.P. No. 18622 of 2017 on 29.5.2017 more than seven months after possession of the subject lands were delivered to respondents 6 to 9 on 27.10.2016. In the affidavit, filed in support of the Writ Petition, the appellant-writ petitioner stated as under:

“I submit, aggrieved by the said G.O. Ms. No.43 dt. 7.10.2016, one of the respondents in the revision ie, one Sri Nandulal Agarwal has filed WP No. 36277 of 2016 and this Hon’ble Court on 27.10.2016 has suspended the said G.O. but curiously impugned panchanama has been prepared on the same day i.e. on 27.10.2016. In fact I have also filed W.P. No. 35276/2016 and this Hon’ble High Court has granted limited interim stay on 4.11.2016 and same was extended on 16.12.2016 and thereafter same was modified by order dt. 29.12.2016. I submit two writ petitions are pending, and for all purposes G.O. has been suspended, not in operation, as such authorities ought not to have conducted panchanama within 20 days from the date of impugned G.O. having knowledge about filing of cases by aggrieved parties before this Hon’ble Court.”

While, initially, an interim order of suspension was passed on 9.6.2017 for a period of six weeks, the said order came to be modified by the learned Single Judge, by the order under appeal in W.P. No. 18622 of 2017 dated 30.8.2017, holding that, since the order of status-quo passed in W.P. No. 35276 of 2016 dated 29.12.2016 was still subsisting, there

could not be any contrary order in the present case, as that would leave a confusion in the mind of the implementing authorities. The order was, therefore, modified to that of status-quo, as a similar order of status-quo was passed in W.P. No. 35276 of 2016 dated 29.12.2016.

Sri K.G. Krishna Murthy, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that, in terms of Regulation 7(4) of the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 (hereinafter referred to as “the Rules”), an agent is required to have a person in possession evicted under Section 3(2), after a decree and order in Form F is passed, and such decree and order shall be executed by Officer specified therein in the manner in which any decree of ejectment by a competent Civil Court is executed. Learned Senior Counsel would refer to Order 21 Rule 10 C.P.C. to submit that Rule 7(4) of the Rules requires the procedure contemplated in the Civil Procedure Code to be followed; and failure to comply with Order 21 Rule 10 C.P.C. necessitates the panchanama, impugned in W.P. No. 18622 of 2017, to be set aside.

On the other hand, Sri P.V. Ramana, learned counsel appearing on behalf of respondents 6 to 9, would submit that the appeal is liable to be dismissed on the short ground of mis-representation of relevant and material facts by the appellant-writ petitioner; he had failed to state that the order in WPMP No. 55728 of 2016 in W.P. No. 35276 of 2016 dated 29.12.2016 was passed after taking note of the fact that, in terms of the panchanama, possession of the subject lands had been delivered to respondents 6 to 9 on 27.10.2016 itself; without specifically stating in the affidavit that possession of the subject lands were delivered to respondents 6 to 9 on 27.10.2016, the interim order of suspension was obtained; and, on his attention being drawn to the fact that an order was passed on 29.12.2016 in W.P. No. 35276 of 2016 directing maintenance of status-quo, the learned Single Judge had passed a similar order of status-quo in the order under appeal.

While the scope of Rule 7(4), read with Order 21 Rule 10 CPC, necessitates examination in the Writ Petition, which is still pending adjudication before the learned Single Judge, the present appeal is preferred against the interim order passed by the learned Single Judge in W.P. No. 18622 of 2017 dated 30.8.2017, modifying the earlier interim order of suspension to that of an order of status-quo.

While we find considerable force in the submission of Sri P.V. Ramana, learned counsel for the respondent-writ petitioner, that the fact of an order of status-quo having been passed on 29.12.2016, as possession of the subject lands had been delivered on 27.10.2016, has not been specifically stated in the writ affidavit, and the appellant-writ petitioner must therefore be held to have suppressed relevant and material facts, it would be inappropriate for us to record a conclusive finding in this regard, since the substantive Writ Petition is still pending adjudication before the learned Single Judge. Suffice it to observe that the discretion exercised by the learned Single Judge to modify the interim order of suspension, to that of status-quo, in the light of the order passed by the learned Single Judge earlier in W.P.M.P. No. 55728 of 2016 dated 29.12.2016, is not one such which would necessitate interference in an intra-Court appeal under Clause 15 of the Letters Patent. The learned Single Judge has exercised his discretion to modify the order of suspension to that of status-quo in the light of the earlier interim order dated 29.12.2016.

The fact that possession of the subject lands had already been delivered to respondents 6 to 9 on 27.10.2016, pursuant to a panchanama, more than seven months before W.P. No. 18622 of 2017 was instituted, would, by itself, justify an interim order of status-quo being passed, instead of an interim order of suspension as that would, then, require possession of the subject lands being redelivered to the appellant-writ petitioner even without their contentions, in the Writ Petition, being

adjudicated on its merits. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal. The Writ Appeal fails and is, accordingly, dismissed. Needless to state that the Writ Petition shall be heard by the learned Single Judge on its merits uninfluenced by any observations made in this order.

Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

19th April, 2018

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