

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.653 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. 19633 of 2018 dated 29.1.2018. The appellant herein invoked the jurisdiction of this Court to declare the action of the Revenue Divisional Officer in issuing proceedings dated 23.4.2017, directing the 5th respondent to stop felling the trees pertaining to patta land admeasuring Acs. 90.00 guntas in various survey numbers situated at Darapalem Village, Gulugonda Mandal, Visakhapatnam District, inspite of the Divisional Forest Officer, Narsipatnam having granted permission vide proceedings dated 19.4.2017, as arbitrary and illegal. The plaintiffs in O.S. No. 209 of 2011 filed an application in WPMP No. 31086 of 2017 to implead themselves as the 7th and 8th respondents in the Writ Petition.

In the order under appeal, the learned Single Judge observed that grant of permission, by the Forest Range Officer, to cut the teakwood trees from the applicant as owner, is different from determination of the dispute under the Record of Rights Act; an appeal was pending before the Revenue Divisional Officer; the question of cutting the trees, pursuant to the permission of the Divisional Forest Officer or the Forest Range Officer as the case may be, would arise on entitlement of the property of the trees in question; as the issue was pending in the ROR appeal before the Revenue Divisional Officer, instead of keeping the Writ Petition pending, with regards the rival claims of the parties including those who sought to implead themselves in the Writ Petition, interest of justice would be sub-served by directing the Revenue Divisional Officer to dispose of the ROR appeal within four weeks from the date of receipt of a copy of the order.

This order of the learned Single Judge is under challenge before us on the ground that the learned Single Judge has not adjudicated the appellant-writ petitioners contentions on merits; the Revenue Divisional Officer lacked jurisdiction to direct the forest officials not to permit felling of trees, or to transport them; the forest officials had mechanically, without application of mind, and at the dictates of the Revenue Divisional Officer, passed the order impugned in the Writ Petition; and respondents 5 and 6 did not apply their mind to the case on hand.

Permission was granted by the Tashildar, under the A.P. WALTA Act for felling of the trees, based on the inspection report of the Mandal Revenue Inspector stating that, as per the revenue records, Sri Chetan Giri had been issued pattadar passbook with regards the subject land on which 504 teak trees were existing; and the applicant (Writ Petitioner) had submitted documentary evidence that the pattadar Sri Chetan Giri had sold away 504 trees to him.

By his proceedings dated 19.4.2017, the Divisional Forest Officer, Narsipatnam accorded permission to the appellant-writ petitioner for felling of 504 standing teak trees existing in the subject land, subject to the conditions prescribed thereunder. Among the conditions stipulated therein was that, before felling the 504 teak trees, the Forest Range Officer should inspect the land and tree growth along with the revenue records in the presence of the pattadar; the Forest Range Officer should instruct the staff to safeguard the nearby Reserve Forest in their jurisdiction; and the area should be re-planted with trees in the place of the felled trees.

Thereafter, a letter was addressed by the Revenue Divisional Officer to the Divisional Forest Officer, Narsipatnam on 23.4.2017 wherein a reference is made to the representation submitted by Sri Malla Dara Malleswara Rao on 19.4.2017, and to O.S. No. 209 of 2011 on the file of the Principal District Judge, Visakhapatnam. In the said letter, the Revenue Divisional Officer stated that Sri Malla Dara Malleswararao

and two others had informed him that orders were passed by the Principal District Court, Visakhapatnam in the schedule property; they had filed an ROR case, which is pending before the Revenue Divisional Officer and the appellate authority; and they had requested the Revenue Divisional Officer to stop tree cutting, if any, sanctioned in subject survey numbers of Darapalem Village, Golugonda Mandal. The Revenue Divisional Officer requested the Divisional Forest Officer to look into the permission, if any, granted, verify the same, and take appropriate action in the matter.

Pursuant thereto, the Divisional Forest Officer issued Memo dated 24.4.2017 informing the Forest Range Officer of the letter addressed by the Revenue Divisional Officer, and to certain other proceedings wherein felling permission was granted as per the title certificate issued by the Tahsildar; an ROR case was preferred, which was pending on the file of the Revenue Divisional Forest Officer, Narsipatnam; and the Forest Range Officer should take immediate action to stop cutting of trees, enquire into the matter, and submit a detailed report for taking further action in the matter. Pursuant thereto, the Forest Range Officer informed the Forest Section Officer to stop cutting of 504 teak trees till further orders were communicated by the Divisional Forest Officer, Narsipatnam; to enquire if any work was taken up by the applicant in the patta land; and to submit a detailed report for taking further action in this regard.

While the proceedings of the Revenue Divisional Officer dated 23.4.2017 was under challenge in the Writ Petition, the subsequent proceedings of the Divisional Forest Officer, and the Forest Range Officer, both dated 24.4.2017 were not under challenge. The contention urged on behalf of the appellant-writ petitioner is that the Revenue Divisional Officer lacked jurisdiction to direct the forest officials to cancel the earlier permission granted for felling of trees.

Under Rule 24(4) of the Andhra Pradesh Water, Land and Trees Rules, 2004 (hereinafter referred to as “the Rules”), if any owner desires to fell a tree, he shall apply in writing to the designated Officer for permission in Form 13 with a fee per tree as indicated in the Rules. The application is required to be accompanied by a site plan indicating the position of the tree required to be felled, and the reasons therefor. Rule 24(5) stipulates that, on receipt of such application, the designated Officer, or an officer authorised by him, may, after inspecting the trees and holding such enquiry as he deems necessary, either grant or refuse the permission applied for in Form 14.

Permission, to fell trees on patta lands is granted by the Tahsildar on an application made by the owner of the land on which the trees exist. It is on the basis that the pattadar was Sri Giri, with whom an agreement of sale with respect to the 504 teak trees was entered into by the appellant-writ petitioner, that an application was submitted by the appellant-writ petitioner herein. Grant of a pattadar passbook to Sri Giri, (on the basis that he was the pattadar of the subject lands), was put in issue by Sri Malla Dara Malleswara Rao and two others, who sought investigation into the pattadar passbooks issued in his favour. The contention that the Revenue Divisional Officer lacked jurisdiction to direct the Forest Range Officer to cancel the permission granted to the appellant-writ petitioner is wholly irrelevant as a bare reading of the letter dated 23.4.2017, addressed by the Revenue Divisional Officer to the Divisional Forest Officer, would show that the RDO had merely requested the DFO to look into and verify the permission, if any, sanctioned for felling of the trees, and to take appropriate action in the matter. All that the Revenue Divisional Officer has done is to inform the Divisional Forest Officer of an appeal having been preferred, by Sri Malla Dara Malleswara Rao and two others, disputing the title of Sri Giri over the subject property. On this information being brought to their notice by the Revenue Divisional Officer in his letter dated 23.4.2017, the

Divisional Forest Officer had directed the Forest Range Officer to stop felling of trees, enquire into the matter and submit a detailed report for taking further action. It is evident from the proceedings of the Divisional Forest Officer dated 24.04.2017 that felling of trees was directed to be stopped pending further enquiry by him. The Forest Range Officer, in turn, informed the Forest Section Officer to take immediate action to stop felling of 504 teak trees, enquire if any work was being undertaken by the applicant in the patta land, and to submit a detailed report for taking further action in this regard. It is evident from the proceedings of the Divisional Forest Officer and the Forest Range Officer dated 24.04.2017 that felling of trees by the appellant-writ petitioner was merely directed to be stopped pending further enquiry by them.

It is only if it is established that the subject lands belong to Sri Giri, would the appellant-writ petitioner, having entered into an agreement with him, be entitled to cut and take away the 504 trees in the subject land. A copy of the order of the Revenue Divisional Officer dated 16.4.2018, (passed after our jurisdiction under Clause 15 of the Letters Patent was invoked by the appellant-writ petitioner), has been placed for our perusal. It does appear, therefrom, that there are various claims of ownership over the subject land, including by Sterling Tree Magnum Company Ltd which claims to have purchased the land in 1995-96 in the name of its employees, to have planted these trees spending the amounts collected from its investors, who in turn were now claiming ownership of such trees; its employees had illegally and fraudulently transferred the subject lands to Sri D.K. Giri without the knowledge of the company, and had created fake and forged documents; and they had obtained pattadar passbooks from the revenue authorities. It is also stated in the said order that there is a title dispute pending between Sri V. Srinivasa Reddy and Sri Malla Dara Malleswara Rao and twenty two others in O.S. No. 545 of 2012. The Revenue Divisional Officer, while directing the Tahsildar to put the lands detailed therein in

the web land dispute register as the lands were under multiple litigation, directed the parties to approach the Civil Court to prove their title over the subject lands.

While this order of the Revenue Officer was no doubt passed after the appeal was filed, it does show that the order of the learned Single Judge, relegating the appellant-writ petitioner to approach the Revenue Divisional Officer, would now serve no useful purpose. It would be wholly inappropriate for us to examine the validity of the order of the Revenue Divisional Officer dated 16.4.2018 in the present appeal as it has not been subjected to challenge in the Writ Petition. As the Revenue Divisional Officer has merely requested the Divisional Forest Officer to look into and enquire into the matter, it cannot be said that the Revenue Divisional Officer has directed the Divisional Forest Officer to stop felling of trees. As we are satisfied that the order of the Revenue Divisional Officer is not a direction to the Divisional Forest Officer, and is merely a request, and that the Divisional Forest Officer had independently taken a decision to direct that the felling of trees be stopped pending further enquiry into the matter, we see no reason to interfere with the order impugned in the Writ Petition, ie, the order of the Revenue Divisional Officer dated 23.4.2017.

While the proceedings of the Divisional Forest Officer dated 24.04.2017 directing that felling of trees be stopped pending further enquiry, has not been subjected to challenge in the Writ Petition, the fact remains that, even in terms thereof, the Divisional Forest Officer is obligated to cause an enquiry into the matter. Suffice it, therefore, to direct the Divisional Forest Officer to cause an enquiry, complete the same with utmost expedition, and pass appropriate orders after giving the appellant-writ petitioners an opportunity of being heard. It is made clear that this order shall not disable the appellant-writ petitioner from questioning the validity of the order of the Revenue Divisional Officer dated 16.4.2018 in appropriate legal proceedings.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

13th June, 2018

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