

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.832 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.20446 of 2017 dated 09.04.2018. The 7th respondent in W.P.No.20446 of 2017 is the appellant herein who filed W.P.No.30256 of 2015 seeking a mandamus to declare the proceedings issued by the Director of Mines and Geology, with regards the quarry lease area held by them in an extent of Acs.20.00 in Survey No.123 of Gurijepalle Village, Santhamagalur Mandal, Prakasam District, as illegal, arbitrary and violative of principles of natural justice. The 1st respondent herein filed W.P.No.20446 of 2017 seeking a mandamus to declare the proceedings dated 13.11.2015 and 26.08.2015, issued by the Assistant Director of Survey and Land Records, as arbitrary and illegal and to set aside the same. A consequential direction was sought to the Director of Mines and Geology to consider their application dated 09.07.2009 for grant of quarry lease for black granite over an extent of Ac.2.47 cents in Survey No. 123 of Gurijepalle Village, Santhamagalur Mandal, Prakasam District without reference to the letters dated 13.11.2015 and 26.08.2015 issued by the Assistant Director of Survey and Land Records.

In the order under appeal, the Learned Single Judge took note of the submission of Sri S.Ravi, learned Senior Counsel appearing on behalf of the 1st respondent-writ petitioner in W.P.No.20446 of 2017, that the measurements carried out by the

Survey Department were not in accordance with the sketch plan annexed to the quarry lease granted to the petitioner in W.P.No.30256 of 2015; the length of 153 chains, shown in Ex.P.20 sketch plan in W.P.No.20446 of 2017, was not the basis for the survey undertaken by the Assistant Director of Survey and Land Records, Ongole; the 153 chains, shown in the said sketch plan, had shrunk to 66 chains in the survey report dated 26.08.2015, and became 63 chains in the sketch plan annexed to the survey report dated 13.11.2015 prepared by the same officials; and since the survey was not carried out by the Assistant Director of Survey and Land Records, in accordance with the sketch plan annexed to the lease deed, the appellant could not have been given a clean chit on the basis of the said survey report.

The Learned Single Judge observed that the Government of Andhra Pradesh was not in a position to explain how the 153 chains, shown in the sketch plan annexed to the lease deed, had shrunk to 66 chains and 63 chains subsequently; in the absence of any valid explanation being given by the revenue authorities, as to how there could be such a serious discrepancy of almost 90 chains to the sketch plans annexed to the lease deed and the survey report submitted by the Assistant Director of Survey and Land Records, a proper survey, keeping in mind the sketch plan annexed to the lease deed, had not been carried out by the Assistant Director of Survey and Land Records; and the manner in which, more than once, the Assistant Director of Survey and Land Records had conducted a survey gave an impression that the appropriate method of survey was unlikely to be followed by him in future also.

The Learned Single Judge was of the view that an independent survey of the area for which a quarry lease had been granted to the appellant, and which was in its occupation, should be conducted by an independent agency i.e Survey of India. W.P.No.30256 of 2015 filed by the appellant was allowed and the order dated 26.08.2015 was set aside. The Learned Single Judge also allowed W.P.No.20446 of 2017 and set aside the letters dated 13.11.2015 and 26.08.2015 issued by the Assistant Director of Survey and Land Records. He directed the Additional Surveyor General, Indian Institute of Survey and Mapping, Uppal, Hyderabad to cause a survey of the land in the occupation of the appellant, after giving notice to the appellant and to the 1st respondent herein, on payment of expenses for the said survey equally by both of them; and to then submit a report to both the parties, as well as the Director of Mines and Geology, Government of Andhra Pradesh, within two months. The Learned Single Judge observed that the application for grant of quarry lease, made by the appellant for Ac.1.75 cents and that made by the 1st respondent herein for Ac.2.47 cents in the said survey number, shall, subject to the result of the survey, be considered in accordance with law after giving notice to both parties, and after passing a reasoned order, which was to be communicated to both the parties. The Learned Single judge made it clear that he had not expressed any opinion on the claims of either party in the Writ Petition.

While Smt. N.Shobha, learned counsel for the appellant, would seek to justify the earlier surveys conducted by the Assistant Director of Survey and Land Records contending that the

variation of 5 cents per acre is permissible, and while the earlier survey was conducted by chains, a more sophisticated survey was conducted later; and if this variation of 5 cents per acre is taken into consideration, the extent of Ac.1.42 cents would fall within the lease granted to the appellant. She would further submit that, since the earlier surveys conducted by the Department were faulted by the 1st respondent, the expenses to be incurred for conducting a fresh survey should have been directed to be borne by the 1st respondent herein, and not by the appellant.

It would be wholly inappropriate for us, in proceedings under Clause 15 of the Letters Patent, to undertake an examination as to whether the earlier survey was conducted properly, or whether it is the later survey which is valid. In the order under appeal, the Learned Single Judge observed that variance of 66 chains and 63 chains in the subsequent survey reports, as compared to the earlier survey report, had not been explained. He has, therefore, exercised his discretion to direct the Additional Surveyor General, Indian Institute of Survey and Mapping, Uppal, Hyderabad to cause a fresh survey. In an intra-court appeal, under Clause 15 of the Letters Patent, this Court would interference only if the order under appeal suffers from a patent illegality. Exercise of discretion, by the Learned Single Judge, to direct a survey to be caused by the Additional Surveyor General, is not one such.

As Smt. N.Shobha, learned counsel for the appellant, contended that the appellant should not be forced to share the expenditure of a fresh survey, we asked Sri S.Ravi, learned Senior Counsel appearing on behalf of the 1st respondent herein, as to whether the 1st respondent was willing to bear the entire

expenditure. While contending that the appellant may not be justified in claiming that it is the 1st respondent who should alone bear the entire expenditure, learned Senior Counsel would submit that it was unnecessary for this Court to adjudicate this issue, as the 1st respondent is willing to bear the entire expenditure for the survey to be caused by the Additional Surveyor General.

In the light of the submission of Sri S.Ravi, learned Senior Counsel, the order under appeal is affirmed subject to the modification that the expenditure for the survey to be conducted by the Additional Surveyor General shall be borne entirely by the 1st respondent herein. The Additional Surveyor General shall conduct a survey, in accordance with law, uninfluenced by the earlier survey reports, and any observations made either in the order under appeal or in the order now passed by us.

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)

(J.UMA DEVI, J)

22nd June, 2018

Note: Issue C.C by 25.06.2018.

JSU

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI**



Writ Appeal No.832 of 2018

Date:22.06.2018

JSU