

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

WRIT APPEAL NO.893 OF 2018

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal is preferred, under Clause 15 of the Letters Patent, against the interim order passed by the Learned Single Judge in I.A. No.1 of 2018 in W.P. No.6847 of 2018 dated 23.04.2018. The 1st respondent herein filed W.P. No.6847 of 2018 seeking a *mandamus* to direct the respondents, (including the appellants herein), and their subordinates, to act in accordance with law; and not to interfere with the petitioner's peaceful possession and enjoyment of his land in Sy. Nos.214/A/229, 186/A and 186/B of Velagapudi village, Tulluru Mandal, Guntur District in any manner, including by laying a road across the same, without following the due process of law. In I.A. No.1 of 2018, the 1st respondent-writ petitioner sought a direction to the respondents (including the appellants herein) not to interfere with the peaceful possession and enjoyment of the petitioner in his land in Sy. Nos.214/A/229, 186/A and 186/B of Velagapudi village, Tulluru Mandal, Guntur District in any manner, including laying a road across the same, without following the due process of law.

In the order under appeal the Learned Single Judge, after taking note of the contents of the counter-affidavit filed by the 2nd appellant herein, and after hearing the Learned Counsel appearing on behalf of the 1st respondent-writ petitioner and the appellants, modified the earlier interim order and directed the respondents therein, including the appellants herein, to maintain *status quo* in all respects with regards the subject property until the Writ

Petition, as well as W.P. No.37534 of 2017 and W.P. No.7437 of 2016, are decided.

Facts, to the extent necessary, are that the 1st respondent herein had earlier filed O.S. No.160 of 2015, before the IV Additional District Judge, Guntur, seeking permanent injunction against the defendants therein, including his mother i.e., the 7th respondent in W.P. No.6847 of 2018. He filed I.A. No.612 of 2015 in O.S. No.160 of 2015, under Order 39 Rules 1 and 2 CPC, for grant of interim injunction restraining the respondents from interfering with his possession. In his order, in I.A. No.612 of 2015 dated 19.08.2015, the IV Additional District Judge, Guntur observed that, on a perusal of Ex.R-1, it was clear that the property, mentioned in para 7(f) of the plaint, stood in the name of Smt. G. Mrudula; Ex.R-2, issued by the Revenue Divisional Officer on 02.06.2015, showed that, upon the application of the petitioner's mother, the revenue officials had caused an enquiry; the Tahsildar had submitted a report stating that neither Sri G. Ramaswamy (the petitioner's father) nor his wife (the petitioner's mother) had executed any document in favour of their family members; the petitioner had obtained pattadar pass books and title deeds for an extent of Ac.18.19 cts, and the said pattadar pass books and title deeds should be cancelled; the Revenue Divisional Officer had concluded that, during the life time of Sri G. Ramaswamy, he had not executed any document in favour of his family members; and, while the petitioner was taking care of the management of the land, he had obtained pattadar pass books and title deeds in his name.

The Learned IV Additional District Judge opined that no evidence was produced by the 1st respondent-writ petitioner that the left over properties were orally partitioned, and the lands situated at Velagapudi village fell to his share; in the case of a male Hindu, dying intestate, all the children of the deceased are entitled to equal shares; as the petitioner had failed to establish his legal title, the pattadar pass books and title deeds issued to him were cancelled by the Revenue Divisional Officer by his order dated 02.06.2015; no documents had been filed by the petitioner to prove that these properties fell to his share on oral partition; while the petitioner claimed that the oral partition was in December, 2000, the pattadar pass books issued in favour of the petitioner revealed that it was issued in November, 2000; the pattadar pass books were issued, in favour of the petitioner's father, on 20.06.1995; and all the pattadar pass books and record of title, standing in the name of the petitioner, were prior to the alleged oral partition as contended by the petitioner; and it was, therefore, not possible to believe the so called oral partition.

The Learned IV Additional District Judge thereafter held that mere entries in the revenue records did not confer any right or title over the documents; the Supreme Court, in **Municipal Corporation Aurangabad v. State of Maharashtra**¹, had observed that mutation did not confer any right and title, nor did cancellation of the mutation extinguish the right and title of the original owner; and normally mutation, when recorded on the basis of possession of the land, was for the purpose of collecting revenue. The Learned Judge disbelieved the petitioner's contention that he

¹ 2015 STPL (Web) 1596 SD

was in physical possession and enjoyment of the plaint schedule properties by the time of filing the suit, and observed that the petitioner had filed the suit for permanent injunction on 15.03.2015, after the Tahsildar had passed the orders cancelling the pattadar pass books on 27.02.2015 suppressing material facts by stating that he was in possession and enjoyment of the plaint schedule property; and he was not entitled to the relief of temporary injunction.

The petitioner thereafter filed W.P. No.7347 of 2016 seeking a mandamus to declare the action of the 2nd appellant herein in passing the order dated 20.07.2015, and in consequently entering into an agreement with the 7th respondent therein (the mother of the 1st respondent-writ petitioner herein) as illegal, arbitrary and contrary to the Rules made under the CRDA Act. By way of interim relief the 1st respondent-writ petitioner sought a direction to the 2nd appellant herein not to dispossess him from the subject land. An interim order was initially passed, in WPMP No.9285 of 2016 in W.P. No.7347 of 2016 dated 08.03.2016, directing *status quo* as on that date to be maintained.

On a petition being filed by the mother of the 1st respondent-writ petitioner, seeking vacation of the ad-interim order of status-quo, the Learned Single Judge, in his order in WVMP No.1351 of 2016 in WPMP No.9385 of 2016 in WP No.7347 of 2016 dated 29.04.2016, observed that the 1st respondent-writ petitioner had, admittedly, filed O.S. No.160 of 2015 before the IV Additional District Judge, Guntur against his mother and others seeking permanent injunction; his claim was that he had been in possession of the subject land for the past 20 years, and was the

absolute owner thereof under an oral partition; he had submitted an application to the CRDA offering to surrender the subject lands under the Land Pooling Scheme formulated by the CRDA; his claim, over the subject land, was hotly contested by his family members, and more particularly by his mother (7th respondent); the 1st respondent-writ petitioner was unsuccessful in securing temporary injunction in the Suit filed by him against his mother and others, and his temporary injunction application was dismissed on 19.08.2015; the pattadar pass books and title deeds, issued to the 1st respondent-writ petitioner, was cancelled by the Revenue Divisional Officer, Guntur, by his order dated 02.06.2015, in the exercise of his appellate powers; and the 1st respondent-writ petitioner claimed that his further appeal was pending consideration before the Joint Collector, Guntur.

The Learned Single Judge, thereafter, observed that the challenge in the main Writ Petition was to the proceedings dated 20.07.2015 whereby the CRDA (the 1st appellant herein) had rejected the objection petition filed by the 1st respondent-writ petitioner, and had held that his mother was entitled to all the benefits under the Land Pooling scheme; his interim prayer was for a direction to the CRDA not to dispossess him from the subject land; it was an admitted fact that the 1st respondent-writ petitioner was willing to surrender the subject lands, claimed by him, to the CRDA under the Land Pooling Scheme; the only dispute was with regards the rival claims put forth by his mother and other family members in relation to the subject lands; under the proceedings impugned in the Writ Petition, the CRDA had rejected his objections, and had accepted the claim of his mother for all the

benefits under the scheme; the interlocutory prayer seemed to go far beyond and in excess of the main prayer; the *status quo* order passed by this Court on 08.03.2016 was not in relation to the contents of the impugned proceedings dated 20.07.2015, but was based only on the arguments of the Learned Counsel for the petitioner as to the 1st respondent-writ petitioner's rights over the alleged standing crop; having failed to secure interim injunction against his mother in the pending suit, and given the admitted fact that his pattadar pass books and title deeds had also been cancelled, the 1st respondent-writ petitioner could not assert any possessory rights over the subject lands before the High Court in a Writ Petition; the relief that he failed to secure from the Civil Court could not be indirectly sought by him in a Writ Petition; and there was no reason to continue the interim order of *status quo* granted on 08.03.2016. The interim order was therefore vacated.

The order of the Revenue Divisional Officer dated 02.06.2015 was confirmed in revision by the Joint Collector, in his order dated 12.09.2017, whereby the pattadar passbooks and title deeds issued earlier to the 1st respondent-writ petitioner, in respect of Ac.18.19 land, was cancelled. The order of the Joint Collector was subjected to challenge in WP No.34526 of 2017. By his order in W.P.No.34526 of 2017 dated 16.10.2017 the Learned Single Judge, while granting interim suspension of the order of the Joint Collector dated 12.09.2017, recorded the submission, urged on behalf of the 1st respondent-writ petitioner, that the amounts payable by the 1st appellant would not be claimed by him pending consideration of the Writ Petition. The effect of the interim order passed in WP No.34526 of 2017 dated 16.10.2017, suspending the

order of the Joint Collector dated 12.09.2017, is only in relation to the cancellation of the Pattedar pass books and title deeds issued earlier to the 1st respondent-writ petitioner, and has no bearing either on the action taken under the land pooling scheme, or regarding the road being laid over the subject land by the 1st appellant herein.

The 1st respondent-writ petitioner, thereafter, filed W.P. No.37534 of 2017 seeking a direction to quash the order of the 2nd appellant dated 20.07.2015, and for a consequential direction to recall the benefits extended to his mother (6th respondent in the said Writ Petition). A consequential direction was sought to recall the benefits extended to the 6th respondent (i.e., the petitioner's mother), and to hold a fresh enquiry for considering the rival claims in accordance with law. The primary challenge to the order of the 3rd respondent dated 20.07.2015 was on the ground that it was based on the order passed by the Revenue Divisional Officer dated 02.06.2015 which was illegal and unsustainable. The 1st respondent-writ petitioner claimed that he had questioned the order of the Revenue Divisional Officer dated 02.06.2015 before the Joint Collector, Guntur under Section 9 of the Records of Rights Act; his appeal was rejected by the Joint Collector on 12.09.2017 confirming the order of the Revenue Divisional Officer; he had questioned the same in the High Court in W.P. No.34526 of 2017; and the order of the Joint Collector had been suspended by the Court on 16.10.2017.

In his order, in WPMP No.46610 of 2017 in W.P. No.37534 of 2017 dated 09.11.2017, the Learned Single Judge observed that, though the 1st respondent-writ petitioner was a co-owner of the

subject land, the impugned order had been passed by the 2nd appellant without notice to him; and there was gross violation of principles of natural justice. Interim suspension of the order of the 2nd appellant dated 20.07.2015 was granted.

In the counter-affidavit filed by the 2nd appellant, in W.P.No.6847 of 2018, it is stated that the 1st respondent-writ petitioner's mother had given Form 9.3 on 02.02.2015 for a total extent of Ac.19.49 cts under the Land Pooling Scheme, together with a xerox copy of the pattadar pass books in her husband's name which was issued by the Mandal Revenue Officer on 05.11.2000; as both the 1st respondent-writ petitioner and his mother had filed Form 9.3 under the Land Pooling Scheme, for the very same extent of the land, it was treated as rival claims; and, after verification of the rival claims, an order was passed on 20.07.2015 in favour of the appellant's mother considering the documents filed by her; a survey was conducted, and it was ascertained that an extent of Ac.19.43 cts of land was in the possession of the 1st respondent's mother; the 1st respondent-writ petitioner had filed a Civil Suit in O.S. No.160 of 2015 against his mother and others for permanent injunction; the Court had dismissed I.A. No.612 of 2015 in O.S. No.160 of 2015 dated 19.08.2015 holding that the suit was filed suppressing material facts, and the 1st respondent-writ petitioner had falsely stated that he was in possession and enjoyment of the plaint schedule properties; the interim order of *status quo*, passed in W.P. No.7347 of 2016 dated 08.03.2016, was vacated on 29.04.2016; the entire physical possession of the land vested with the 1st appellant; a conjoint reading of Section 50 and Rule 8(9) of the Land Pooling

Rules made it clear that pendency of an ownership dispute was not a bar for including the land under the Land Pooling Scheme; the dispute between the 1st respondent-writ petitioner and his mother was over the title of the land; as both parties had given consent for surrendering the lands under the Land Pooling Scheme, the benefits of the Land Pooling Scheme would be extended as per the final outcome of the judgment of the High Court and other Civil Courts; the lands were in physical possession of the appellant, and it was transferred under Form-9.14 agreement; the 1st respondent-writ petitioner was trying to drag the appellants into a family dispute, and was trying to trespass into the appellants land, and in obstructing public works; possession of the lands were taken under the Land Pooling Scheme; neither the 1st respondent-writ petitioner nor his mother were in possession thereof; and, in the event the 1st respondent-writ petitioner succeeded in his attempt, and the competent Court declared him as the rightful owner, all benefits, which accrued under the Land Pooling Scheme, would be extended to him.

In the order under appeal the Learned Single Judge noted that, initially on 28.02.2018, an undertaking was given by the Learned Standing Counsel for the appellant that, if the 1st respondent-writ petitioner succeeded in the Writ Petition, they would demolish the road, and restore back possession to him. Thereafter, the Learned Single Judge observed that the Land Pooling Scheme was, admittedly, an open offer made by the State Government; persons, seeking to avail the said offer, were required to submit applications; the 1st respondent's mother had submitted an application on 02.02.2015; the petitioner's objection was

considered, and an order was passed on 20.07.2015 wherein the claim of the petitioner's mother was upheld; this order was suspended in W.P. No.37534 of 2017; the application made by the petitioner on 17.08.2015 had, admittedly, not been considered and decided by the 2nd appellant; mere filing of an application, for land pooling, did not automatically result in vesting of the lands in the appellants; the order dated 20.07.2015 had been suspended in WPMP No.46610 of 2017 in W.P. No.37534 of 2017 dated 09.11.2017; there was no decision on the Land Pooling Scheme application submitted by the 1st respondent-writ petitioner's mother, and they must be treated as pending; Rule 8(9) of the Rules did not result in the land being vested in the appellant, and for the appellant to utilise the land; vesting would arise only after a final notification of the Land Pooling Scheme under Rule 10; the handing over of the land possession certificate executed by the petitioner's mother, on which **reliance** was placed, was also of no avail; the said certificate would have value only if the order passed by the 2nd appellant dated 20.07.2015 was ultimately sustained by the Court; as the order dated 20.07.2015 was suspended, the handing over possession certificate also stood automatically suspended; and, therefore, the earlier order should be modified and the respondents should maintain *status quo* in all respects.

As noted hereinabove, the challenge in W.P. No.7347 of 2016 is to the validity of the order passed by the Special Deputy Collector & Competent Authority (CRDA), Land Pooling dated 20.07.2015, as arbitrary and illegal. An identical relief was later sought by the 1st respondent-writ petitioner in W.P. No.37534 of 2017 to quash the very same order of the Special Deputy Collector

& Competent Authority (CRDA), Land Pooling dated 20.07.2015. We find considerable force in the submission of the Learned Special Government Pleader, appearing on behalf of the appellants, that W.P. No.37534 of 2017 is not maintainable as the relief sought therein, i.e., to quash the order in R.C. No.520 of 2015 dated 20.07.2015, was under challenge earlier in WP No.7347 of 2016; W.P.No.37534 of 2017 was filed more than one and half years after the interim order, passed in WP No.7347 of 2016, was vacated by order of this Court dated 29.04.2016; and the bonafides of the 1st respondent-writ petitioner, in filing W.P. No.37534 of 2017 to quash the order dated 20.07.2015 after the earlier interim order passed in WPMP No.9385 of 2016 in W.P. No.7347 of 2016 was vacated on 29.04.2016, are suspect. It would, however, not be appropriate for us to express a conclusive opinion thereupon, since both W.P.No.7347 of 2016 and W.P.No.37534 of 2017 are still pending adjudication before the Learned Single Judge.

In the affidavit, filed in support of W.P. No.7347 of 2016, the 1st respondent-writ petitioner had admitted that he had submitted an application in Form 9.3 to the respondents expressing his willingness to give his land under the Land Pooling Scheme. Chapter VIII of the Andhra Pradesh Capital Region Development Authority Act, 2014 (hereinafter called the "Act") relates to development schemes. Section 43(5) of the Act stipulates that, notwithstanding anything contained under the Act, the Government may, after making such inquiry as it deems necessary, by notification, require the A.P. Capital Region Development Authority to make development schemes in respect of any area within the capital region which conforms to the provisions

of the Act. Rule 6 of the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 (hereinafter called the “2015 Rules”) relates to declaration of intention, and Rule 6(2)(ii) provides that, pursuant to a notification issued under Section 43(5) of the Act, the Competent Authority shall, within fifteen days from the date of such notification by the government, issue a notice in Form 9.1 inviting participation of land owners in the proposed Land Pooling Scheme by receiving consent applications in Form 9.3 from the land owners.

Form 9.3 is the application form with an affidavit to take part in the Land Pooling Scheme. Thereunder the applicant, after conveying his agreement to the Land Pooling Scheme, expresses his willingness to relinquish/forego his alienable rights in the land in favour of the CRDA, and for allotment of a part of the developed land as per his entitlement at the time of final notification under the Land Pooling Scheme, in view of consideration by the CRDA as detailed in the Act and the Rules. Under Para 3 of Form No.9.3, the applicant expresses his willingness to surrender the prescribed land under Schedule II of the Land Pooling Scheme, and for final allotment of a proportionate share of the reconstituted land. The applicant is also required, under Form 9.3, to express his agreement that the option exercised by him is irreversible. The 1st respondent-writ petitioner has conveniently omitted to make any reference, of his having submitted an application in Form 9.3, in the affidavits filed by him in support of W.P. No.37534 of 2017 and W.P. No.6847 of 2018.

While vacating the earlier interim order passed in WPMP No.9385 of 2016 in WP No.7347 of 2016, the Learned Single Judge

had, in his order in WVMP No.1351 of 2016 dated 29.04.2016, categorically held that it was an admitted fact that the petitioner was willing to surrender the subject lands, claimed by him, to the CRDA under the Land Pooling Scheme; and the only dispute was with regards the rival claims put forth by his mother and other family members in relation to the subject land. It does appear, that it is only during the course of arguments in I.A. No.1 of 2018 in W.P. No.6847 of 2018, that the Learned Counsel for the petitioner had contended that the application for Land Pooling, submitted by the petitioner on 17.08.2015, was under a mistaken impression. Having agreed to surrender his land under the Land Pooling Scheme as early as on 17.08.2015, and having kept quiet ever since for nearly three years, till the hearing of I.A. No.1 of 2018 in WP No.6847 of 2018 in April, 2018, even without explaining how such a mistake had occurred, it does seem that the 1st respondent-writ petitioner has taken such a stand only to wriggle out of the said admission, and to justify his claim that the appellants should not lay a road over the subject land.

As has been observed by the Learned Single Judge, in the order in WVMP No.1351 of 2016 dated 29.04.2016, the gamut of controversy is confined only the dispute with regards the rival claims put forth by the 1st respondent-writ petitioner and his mother and other family members in relation to the subject land. Since the option exercised by the 1st respondent-writ petitioner, in Form 9.3 on 17.08.2015, is irreversible, all that would result, even if the proceedings dated 20.07.2015 were to be set aside later, when W.P. Nos.7347 of 2016, W.P.Nos.34526 and 37534 of 2017 and W.P. No.6847 of 2018 are finally heard, and consequently the

2nd appellant were to pass an order afresh in favour of the 1st respondent-writ petitioner, is that the benefits, under the Land Pooling Scheme, would be extended to the 1st respondent-writ petitioner, instead of to his mother. That would, however, not disable the appellants from laying a road, since both the 1st respondent-writ petitioner and his mother have agreed to surrender the subject land under the Land Pooling Scheme. Rule 8(8) of the 2015 Rules stipulates that, as soon as the ownership is established, the competent authority for land pooling shall report the list of land owners, and such other details in Form 9.13 to the Commissioner, and thereupon the competent authority shall enter into an agreement in Form 9.14 to firm up the irrevocable powers of the authority to alter the boundaries, develop and make requisite changes in the land pool area. Form 9.14 is the development agreement-cum-irrevocable general power of attorney. By clause (vii) of the said agreement, the 1st respondent-writ petitioner's mother granted irrevocable rights and license to the APCRDA, and empowered it to enter into and develop the subject property.

The 2nd appellant has, in his counter-affidavit filed in W.P.No.6847 of 2018, asserted that possession of the subject lands were taken by CRDA under the L.P. Scheme much prior to 09.11.2017 when interim suspension of the order dated 20.07.2015 was granted in W.P.M.P.No.46610 of 2017 in W.P.No.37534 of 2017 dated 09.11.2017. As the agreement in Form 9.14, (whereby possession of the subject land was delivered to the appellants), is said to have been executed before the interim order in W.P.No.37534 of 2017 was passed on 09.11.2017, it is

only on the said agreement being subjected to challenge, and on its terms and conditions being interdicted by this Court, can it be said that the agreement cannot be enforced, and the possession delivered in terms of such an agreement is illegal. Since the agreement entered into by the appellants, with the 1st respondent-writ petitioner's mother in Form 9.14, was not even under challenge in W.P.No.37534 of 2017, we find it difficult to agree with the conclusion of the Learned Single Judge that the agreement was dependant on the order dated 20.07.2015; and once the order dated 20.07.2015 was suspended, the agreement also stood automatically suspended. Having agreed to surrender his land under the Land Pooling Scheme to the CRDA, the 1st respondent-writ petitioner cannot now be heard to contend that the appellant should not lay a road on the subject land even though possession of the subject land was delivered to the appellants by the 1st respondent-writ petitioner's mother pursuant to the agreement executed by the 1st respondent-writ petitioner's mother in Form 9.14.

As this appeal is preferred only against the interim order passed in I.A.No.1 of 2018 dated 23.04.2018, and as W.P.No.6847 of 2018 is still pending adjudication before the Learned Single Judge, it would be wholly inappropriate for us to interpret either Section 50 of the Act or Rules 8(9) and 10 of the 2015 Rules, or record our finding on when the land stands vested in the APCRDA. Suffice it to leave all these questions open for examination when W.P.No.6847 of 2018 is finally heard by the Learned Single Judge along with W.P.No.7347 of 2016 and W.P.Nos.34526 and 37534 of 2017.

As noted hereinabove, the petitioner's application in I.A. No.612 of 2015 in O.S. No.160 of 2015, for grant of temporary injunction restraining his mother and other siblings from interfering with his possession, was rejected by the Civil Court by its order dated 19.08.2015. The relief sought for, in WP No.6747 of 2018, is for a mandamus to direct the respondents in the Writ Petition not to interfere with the petitioner's peaceful possession and enjoyment over the subject land. Even in the inter-se dispute between the petitioner on the one hand and his mother and other siblings on the other, as to who is in possession of the subject lands, the Civil Court has refused to grant the 1st respondent-writ petitioner the relief of temporary injunction sought for by him. The Learned Single Judge, in his order in WVMP No.1351 of 2016 in W.P. No.7347 of 2016 dated 29.04.2016, has opined that the petitioner cannot assert his possessory rights over the subject lands in writ proceedings under Article 226 of the Constitution of India. Having failed to secure an order of temporary injunction from the Civil Court, wherein the 1st respondent-writ petitioner's possession over the subject property was disbelieved, he cannot indirectly seek such a relief in W.P. No.6847 of 2018, more so when he was denied a similar interim relief earlier in W.P. No.7347 of 2016.

The appellants claim to have taken possession of the subject land consequent upon Form 9.3 being submitted, both by the 1st respondent-writ petitioner and his mother. In the counter-affidavit, filed by the Special Deputy Collector, it is stated that the subject lands are in the physical possession of the appellant; the respondent-writ petitioner was trying to trespass into the subject

land by obstructing public works; neither the 1st respondent-writ petitioner nor his mother are now in possession of the subject land; and, if the Competent Court declared him as the rightful owner, all benefits, which accrue under the Land Pooling Scheme, would be extended to the petitioner. As the 1st respondent-writ petitioner has given his consent, by submitting Form 9.3, for the subject land being brought under the Land Pooling Scheme, and has agreed in Form 9.3 itself that the option exercised by him is irreversible, there is no justification in his now seeking to prevent the appellants from completing the work of laying a road over the subject land as part of the infrastructural development of the Capital Region.

Larger public interest would require this Court not to interfere with the execution of public works on lands which the appellants have taken possession of, pursuant to Form 9.3 submitted both by the 1st respondent-writ petitioner and his mother. The very amplitude of the extra-ordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, (**Thansingh Nathmal v. Supdt. of Taxes**²), and not as a matter of course. This Court would refrain from interference, in the exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, save larger public interest. A writ of mandamus is discretionary, unlike a writ of habeas corpus which can be sought as a matter of right. One of the principles inherent is that the exercise of discretionary power should be for the sake of justice and, if interference would result in

² AIR 1964 SC 1419

greater harm to society, then this Court may refrain from exercising the power. (**State of Maharashtra v. Prabhu**³).

The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether intervention of the Court is called for or not. (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd**⁴; **Air India Ltd v. Cochin International Air Port Ltd**⁵; **Rashpal Malhotra v. Mrs. Saya Rajput**⁶; **Council of Scientific and Industrial Research v. K.G.S. Bhatt**⁷). One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a Court of appeal to set right supposed errors of law which do not occasion injustice. (**Sangram Singh v. Election Tribunal, Kotah**⁸). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved. (**Rashpal Malhotra**⁶; **K.G.S. Bhatt**⁷). Larger public interest would be served if public works are promptly executed, and are not interdicted, save in cases where a clear case for interference is made out.

It is not as if the 1st respondent-writ petitioner would suffer irreparable injury, even if Form 9.3, submitted by him were later held to be invalid, as the appellants can still acquire the subject

³ (1994) 2 SCC 481

⁴ (2005) 6 SCC 138

⁵ (2000) 2 SCC 617

⁶ AIR 1987 SC 2235

⁷ AIR 1989 SC 1972

⁸ AIR 1955 SC 425

land in accordance with the provisions of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Viewed from any angle, the interim order under appeal must be, and is accordingly, set aside. Suffice it to make it clear that the action of the appellants, to lay a road over the subject land, shall abide by the result of WP No.6847 of 2018, W.P. No.34526 of 2017, W.P. No.37534 of 2017 and WP No.7347 of 2016, all of which shall be listed together, and posted for final hearing at an early date.

The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date: 18.07.2018.
MRKR/CS

