

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.803 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 I.A. No. 1 of 2018 in W.P. No. 17222 of 2018 dated 6.6.2018.

The respondents herein filed W.P. No. 17222 of 2018 seeking a mandamus to declare the action of the appellants, in taking possession and in starting construction activities in the lands procured under GO Ms. No. 123 dated 30.7.2015 in Etigadda Kistapur and other neighbouring Villages for the Komaravelli Mallannasagar Reservoir without following the due process of law, as illegal, unconstitutional, and against principles of natural justice; and, consequently, to direct the appellants to comply with all the provisions of Act 30 of 2013, including the provisions of Rehabilitation and Re-settlement, before taking possession of the lands procured under GO Ms. No. 123 dated 30.7.2015 for the proposed purpose of Komaravelli Mallannasagar Reservoir in Etigadda Kistapur and other neighbouring Villages. By way of an interim order, the respondent-writ petitioners sought stay of taking possession, and initiation of any kind of construction activity, by the appellants in the lands procured under GO Ms. No. 123 dated 30.7.2015 in Etigadda Kistapur and other villages for the proposed Komaravelli Mallannasagar Reservoir, while allowing agricultural operations to continue in the subject lands, pending disposal of the Writ Petition.

In the order under appeal, the learned Single Judge observed that, in view of Section 38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (hereinafter referred to as "the 2013 Act"), which prohibits taking of possession, until full payment of compensation as well as rehabilitation

and re-settlement entitlements are paid to entitled persons including the respondent-writ petitioners herein, who claim to be landless agricultural labourers entitled thereto under Section 16 of the said Act, there shall be interim stay as prayed for.

As noted hereinabove, the interim stay sought for was to stay taking of possession and initiation of any kind of construction activity in the lands procured under GO Ms. No. 123 dated 30.7.2015 in Etigadda Kistapur and other villages. In effect, not only have the respondent-writ petitioners sought stay of dispossession, they have also sought stay of construction not only in Etigadda Kistapur village, but also in other villages where lands were acquired/purchased for the proposed Komaravelli Mallannasagar Reservoir.

In the affidavit, filed in support of the Writ Petition, the respondent-writ petitioners assert that they are earning their livelihood since generations by doing agricultural work in the lands of Etigadda Kistapur and other neighbouring villages. While Etigadda Kistapur is specifically mentioned, no details are furnished in the affidavit as to which of respondent-writ petitioners are working in which of the other villages, for their right to rehabilitation and re-settlement would arise only if the land, on which they are working as agricultural labourers, have either been acquired or has been purchased under GO Ms. No. 123 dated 30.7.2015.

Learned Additional Advocate General for the State of Telangana, appearing on behalf of the appellants, would draw our attention to the undertaking furnished to the learned Single Judge by the Administrator for Rehabilitation and Re-settlement & Joint Collector, Siddipet District that even though land was procured, farmers are in possession, and are cultivating the lands, since displacement of villagers and land owners will be taken up only after payment of R&R benefits, and construction of R&R colony; the bund works or any project work will not be commenced in Etigadda Kistapur and Vemulaghat Villages till payment is made as

per the provisions of the Act; and the bund/substation works have commenced in Yerravally and Singaram Villages of Kondapak Mandal and Villages of Thoguta Mandal. Learned Additional Advocate General would submit that, as a result of the interim order, the bund/sub-station work being undertaken at Yerravally and Singaram Villages of Kondapak Mandal, and Villages of Thoguta Mandal have been stayed, even though the respondent-writ petitioners claim to be agricultural labourers in Etigadda Kistapur village.

W.P. No.17222 of 2018 was filed by the respondent-writ petitioners as persons aggrieved by the action of the appellants; and, if they are agricultural labourers in Etigadda Kistapur Village, they cannot be heard to complain of a bund being constructed, and sub-station construction activity being undertaken, in other villages unless they are able to show, adducing sufficient proof in this regard, that, though they are residents of Etigadda Kistapur Village, they are actually working as agricultural labourers on the lands where the bund is being constructed, and sub-station construction activity is being undertaken. No such averment is to be found the affidavit filed in support of W.P. No.17222 of 2018.

While the learned Single Judge has referred to Section 38 of the 2013 Act, Sri K.S. Murthy, learned counsel for the respondent-writ petitioners, would draw our attention to Section 45 of the 2013 Act also. Section 38(1) of the Act confers power on the Collector to take possession of the land, after ensuring that full payment of compensation as well as rehabilitation and re-settlements, is made or tendered to the entitled persons. As the petitioners claim to be residents of Etigadda Kistapur Village, if the land owners in this village are dispossessed, the respondent-writ petitioners, as agricultural labourers, would be denied their right to livelihood working in such lands, even without their being paid R&R benefits under the 2013 Act. As noted hereinabove, it is the case of the appellants that, while these lands have no doubt been purchased under GO Ms. No. 123 dated 30.7.2015, the lands owners are

still in possession of and are cultivating these lands; and it is only after payment of R&R benefits, to all those who are entitled thereto, would the Government take possession of these lands in Etigadda Kistapur Village.

Section 45 of the 2013 Act relates to constitution of a Rehabilitation and Re-settlement Committee at the project level. The question whether such a Committee has been constituted, and whether such a Committee is examining the entitlement of those who seek rehabilitation and re-settlement, are again matters to be examined by the learned Single Judge in the Writ Petition after the appellants file their counter-affidavit. In an intra-Court appeal, preferred against an interlocutory order, it would be wholly inappropriate for us to decide the Writ Petition itself.

Yet another contention of Sri K.S. Murthy, learned counsel for the respondent-writ petitioners, is that, while the respondent-writ petitioners have no doubt asserted that they are landless agricultural labourers earning their livelihood by doing agricultural work in the lands in Etigadda Kistapur Village, they have also stated that they are doing agricultural work in neighbouring villages. What has been, conveniently, omitted to be stated is whether the respondent-writ petitioners were actually working as agricultural labourers in agricultural lands, in Yeravalli and Singaram villages of Kondapak Mandal, and the villages of Thoguta Mandal, in which the sub-station and bund work is under execution. In the absence of any such averment in the Writ Petition, it would be wholly inappropriate for us to stay execution of the subject work being carried on in villages other than in Etigadda Kistapur.

We consider it appropriate, therefore, to modify the order of the learned Single Judge, and restrict the interim order of stay only to Etigadda Kistapur Village. If, as is now contended before us by Sri K.S. Murthy, learned counsel for the respondent-writ petitioners, that the respondent-writ petitioners are working as agricultural labourers in the lands, where the sub-station and bund works are being executed, it is

always open to them to place sufficient documentary evidence, in support of such a contention, before the concerned authorities in this regard and request that they not be dispossessed therefrom. Needless to state that this order shall not disable the appellants, after complying with the R&R requirements of the 2013 Act, to take possession of the lands, even in Etigadda Kistapur Village, in accordance with law.

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

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

15th June, 2018

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI



Writ Appeal No. 803 of 2018

Date: 15.6.2018

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