

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT APPEAL NO.823 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 WP.No.19591 of 2018 dated 14.06.2018.

The appellants herein filed the Writ Petition seeking a mandamus to declare the action of the respondents in issuing and not cancelling the provisional registrations dated 01.03.2017 and 13.06.2017, and in not preventing the attempts of the respondents to carry on aqua-culture activities, as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

In the order under appeal, the learned Single Judge noted that provisional registration had been granted by the respondent-authorities in favour of the unofficial respondents for carrying on aqua-culture activities; and the learned Government Pleader had submitted that Clause 10 of G.O.Ms.No.15 dated 26.05.2015 provided for an appeal to the Commissioner of Fisheries, Government of Andhra Pradesh. In view of the alternative remedy available to him, the Learned Single Judge deemed it fit to dispose of the Writ Petition leaving it open to the petitioners to file an appropriate appeal, within a period of one week from the date of the order, before the appellate authority i.e., the Commissioner of Fisheries; and observed that, if any appeal is filed before the Commissioner, within the time stipulated, the same be considered and appropriate orders be passed strictly in accordance with law,

as expeditiously as possible, preferably with a period of six weeks from the date of filing of such appeal, after giving an opportunity to all stake-holders.

It is clear, from the Writ Petition itself, that provisional registration was granted to the respondents on 13.06.2017. It is also not in dispute that G.O.Ms.No.15 dated 26.05.2015 provides for the remedy of an appeal. Sri P.Suresh Kumar, learned counsel for the appellants-writ petitioners, would however contend that, while relegating the appellant to the remedy of an appeal, the learned Single Judge ought to have restrained the respondents from carrying on aqua-culture operations till the disposal of the appeal; as a result, aqua-culture operations are being carried on unabated; a list of beneficiaries has already been prepared, and the Government has levelled the land for its allotment to eligible dalit families, including the petitioners; permitting the respondents to carry on aqua-culture operations in the neighbouring lands would result in the subject lands not being assigned to the appellants, besides denying them ground water facilities in the plots under their occupation; and the learned Single Judge ought to have injuncted the respondents, from carrying on aqua-culture operations, till the appeal was decided by the Commissioner.

We must express our inability to agree. The learned Single Judge has, in the order under appeal, noted that provisional registration was given to the respondents for carrying on aqua-culture operations. On the ground that the respondents had a valid permission to carry on aqua-culture operations, the learned Single Judge, while permitting the appellant-writ petitioners to prefer an appeal to the Commissioner, Fisheries, did not choose to

pass an interim order restraining the respondents from carrying on aqua-culture operations.

The question whether a Writ Petition should be entertained, or the petitioner should be relegated to their appellate remedies, are matters within the discretion of the learned Single Judge. The learned Single Judge has exercised his discretion to relegate the petitioners to the remedy of an appeal, instead of entertaining the Writ Petition. While both the learned Government Pleader for Fisheries and the learned counsel appearing for the unofficial respondents submit that no right of the appellants has been violated, it is unnecessary for us to dwell on this matter as these are all matters to be examined in the appeal, which the learned Single Judge had permitted the appellant-writ petitioners to avail before the Commissioner, Fisheries. We see no reason, therefore, to interfere with the order under appeal to the extent the appellants were relegated to avail their appellate remedies.

Sri P.Suresh Kumar, learned counsel for the appellants-writ petitioners, would submit that the appeal necessitates an early hearing, and the appellants have already filed their appeal one week ago. We consider it appropriate, in such circumstances, to direct the appellate authority, in case an appeal has already been filed by the appellants herein, to consider and dispose of the appeal with utmost expedition and, in any event, not later than three (3) weeks from today. Learned Government Pleader undertakes to inform the Commissioner, Fisheries of his obligations under this order.

Subject to the aforesaid observations, the Writ Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

26th June 2018

NOTE: Issue CC by two days
B/O
RRB

