

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

WRIT APPEAL No. 863 of 2018

JUDGMENT: *(Per the Hon'ble Sri Justice Ramesh Ranganathan)*

This appeal is preferred, under Clause 15 of Letters Patent, against the order passed by the learned Single Judge in W.P.No.17455 of 2018 dated 05.06.2018. Respondents 5 and 6 in the writ petition are in appeal against the aforesaid order. The first respondent herein filed the writ petition seeking a *mandamus* to declare the inaction of the official respondents in failing to initiate action against the appellants herein, pursuant to the notice issued by the State Government on 09.12.2015 and the communication dated 29.03.2018, as arbitrary and illegal. Two Interlocutory Applications were filed in the said writ petition. In I.A.No.1 of 2018, the first respondent – writ petitioner had sought a direction to the official respondents to take steps to ensure that no further construction was carried out by the appellants, and in I.A.No.4 of 2018 a direction was sought to the official respondents to remove the illegal constructions made by the appellants herein. Even without putting the appellants (respondents 5 and 6) on notice, the learned Single Judge directed the official respondents to remove the illegal constructions made by the appellants as per the notice dated 07.05.2018, and to file a counter affidavit as to what action had been taken in that regard.

2. The order directing demolition of the existing structures, even without notice to the person who has raised such construction, suffers from a patent error as it is in violation of principles of natural justice.

3. We are satisfied, however, that setting aside the order in appeal may well result in the appellants proceeding with construction even if it is

not in accordance with law. Suffice it therefore, while setting aside the order under appeal, to direct that, pending further orders in the writ petition, the appellants shall not make any further construction on the subject land. This judgment passed by us shall also not disable the official respondents from taking action, against the appellants herein, in accordance with law.

4. The Writ Appeal is disposed of accordingly. No order as to costs.

Miscellaneous Petitions, if any, pending in the writ appeal shall stand closed in the light of this final order.

THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date: 16.07.2018
va/vs

