

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT APPEAL NOS.910 AND 913 OF 2018

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

These two appeals are preferred against two interlocutory applications filed by the first respondent herein in W.P.No.19940 of 2018. While I.A.No.1 of 2018 was filed to suspend the memo dated 23.02.2018 issued by the Government of Andhra Pradesh, I.A.No.2 of 2018 was issued to direct respondents 1 to 6 therein not to interfere with the petitioner's possession and enjoyment of the subject property.

The memo, impugned in the Writ Petition, was issued by the Principal Secretary to the Government on 23.03.2018, whereby the District Collector was directed to implement his earlier order dated 23.02.2017 to remove the illegal road encroachment, and not to take any action for regularising the subject matter of the proposal since it was against the orders of the Supreme Court. The District Collector was also requested to take necessary action for removal of the encroachments as per due procedure.

The first respondent-writ petitioner had earlier filed W.P.No.22794 of 2017 to declare the action of the Panchayat Secretary, Pedapulivarru Gram Panchayat, in interfering with her peaceful possession of the subject property without following due process of law, as arbitrary and illegal. By the interim order, in W.P.No.22794 of 2017 dated 13.07.2017, a learned Single Judge of this Court directed the respondents not to interfere with the

possession and enjoyment of the petitioner except by due process of law.

While the impugned memo dated 23.03.2018, no doubt, required the District Collector not to regularise the subject land in the respondent-writ petitioner's favour, the District Collector was also directed thereby to take necessary action for removal of the encroachment as per due procedure. Whether or not the respondent-writ petitioner is entitled to have her land regularised necessitates examination in the Writ Petition wherein she sought a mandamus to declare the impugned memo dated 23.02.2018 as illegal and arbitrary, and to consequently set aside the same. Since the respondent-writ petitioner has sought a direction, not to be dispossessed, in I.A.No.2 of 2018, it was unnecessary to seek suspension of the impugned memo dated 23.03.2018 in I.A.No.1 of 2018.

As noted hereinabove the impugned memo dated 23.03.2018 specifically requires the District Collector to take necessary action for removal of encroachment as per due procedure. Such a direction, when read in the light of the earlier interim order passed by this Court in W.P.No.22754 of 2017 dated 13.07.2017, would require the respondent-officials to put the respondent-writ petitioner on notice, give her an opportunity of being heard, and only thereafter to take action in accordance with law. Having invoked the jurisdiction of this Court earlier by way of W.P.No.22794 of 2017, and having secured the interim order dated 13.07.2017, the respondent-writ petitioner cannot now be heard to contend that she should not be dispossessed, from the subject

land, even in accordance with law, and after following the due procedure.

Sri P.Roy Reddy, learned counsel for the respondent-writ petitioner, would submit that notices, if any, issued by the Gram Panchayat would be an exercise in futility as the impugned memo dated 23.03.2018 records that the subject land is an encroachment on the road; and it would not be open to the Gram Panchayat to take a different view from that of the Government. It would suffice, therefore, to make it clear that, in case the Gram Panchayat intends taking action against the first respondent-writ petitioner, she shall be put on notice and be given an opportunity of being heard. The concerned authority shall, thereafter, pass a reasoned order taking note of the objections, if any, which the respondent-writ petitioner may raise in her reply to the show cause notice, uninfluenced by the observations in the impugned memo dated 23.03.2018. Needless to state that it is open to the respondent-writ petitioner to take all such contentions, as are available to her in law, in her reply to the notice, if any, issued by the Gram Panchayat.

Both the orders under appeal are modified in the manner indicated hereinabove, and both the Writ Appeals are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

6th July 2018
RRB