

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

WRIT APPEAL No. 957 of 2018

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

This appeal, under Clause 15 of Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.No.23498 of 2003 dated 08.06.2018. The appellants herein filed the writ petition seeking a *mandamus* to declare the action of the Station Commander cum Estates Officer, Secunderabad, in issuing the show cause notice dated 17.10.2003 under Section 4(i)(b)(ii) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act'), as without jurisdiction. A consequential direction is sought to the Station Commander cum Estates Officer not to interfere with the peaceful possession and enjoyment of the property situated in Bungalow bearing No.219 of Thokatta Village, Secunderabad.

The appellants-writ petitioners have had the benefit of an interim order ever since the writ petition was filed till it was disposed of by the order under appeal wherein the learned Single Judge observed that judicial review would not be undertaken in proceedings under Article 226 of the Constitution of India where title disputes are involved; the dispute was civil in nature, and could only be resolved by a competent Civil Court and not by the High Court under Article 226 of the Constitution of India; and no writ petition would lie against a show cause notice which carried no legal infirmity.

2. Sri B. Vijaysen Reddy, learned counsel for the appellants-writ petitioners, would submit that, since the material placed on record would undoubtedly show that the subject property is not a public premises, the third respondent lacked jurisdiction to initiate proceedings under the Act, and the writ jurisdiction of this Court can always be invoked in cases where the show cause notice is questioned as suffering from inherent lack of jurisdiction.

3. On the other hand Sri K. Lakshman, learned Assistant Solicitor General appearing on behalf of the respondents, would submit that the subject property belongs to the Union of India; the appellants-writ petitioners are seeking to grab property which does not belong to them; and in any event all the contentions, which are urged in the writ petition, can always be urged, before the competent authority under the Act, in their reply to the show cause notice.

4. While even a show cause notice can be questioned, in proceedings under Article 226 of the Constitution of India, if it suffers from inherent lack of jurisdiction, the present case is not one such. It is not even contended before us by the learned counsel, appearing on behalf of the appellants-writ petitioners, that, even if the subject property is a public premises, the third respondent would still lack jurisdiction to initiate proceedings under the Act. The contention, urged on behalf of the appellants, is only that the subject property is not a public premises. This is disputed by the respondents.

5. Since the contentions urged in the writ petition, including that the subject property does not fall within the ambit of the Act, can always be urged by the appellant in his reply to the show cause notice, we see no reason to entertain this appeal against the order of the learned Single Judge dismissing the Writ Petition. We, however, make it clear that, in case the appellants submit their reply to the show cause notice within two weeks from today, the respondents shall not take any coercive steps to evict them from the subject premises till a final order is passed, and communicated to the appellants. In case the appellants fail to submit their reply to the show cause notice, within two weeks from today, it is open to the respondents to proceed and take action against them in accordance with law.

6. Subject to the aforesaid observations, the Writ Appeal fails and is accordingly dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in the writ appeal shall also stand dismissed.

THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date: 19.07.2018

Note: Issue C.C. in two days
B/o
va/pnb