

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1132 OF 2018
&
WRIT PETITION No.28113 OF 2018

COMMON JUDGMENT: *(Per the Hon'ble Si Justice S.V.Bhatt)*

Heard learned counsel for the parties.

2. The writ appeal is directed against an interlocutory order dated 09.08.2018 in I.A.No.1 of 2018 in W.P.No.28113 of 2018. The counsel consent to disposing of the writ appeal and writ petition by this common judgment.

3. Battula Madhu Sudhan Rao/writ petitioner prays for a writ in the nature of Mandamus declaring the resolution of 4th respondent- Gram Panchayat passed on 27.05.2018 permitting the 5th respondent-temple to construct wall in the public tank located on the eastern side of 5th respondent-temple as illegal, irrational, without jurisdiction and violative of the provisions of the Andhra Pradesh Gram Panchayat Act, 1993 and the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.

4. We have perused the resolution dated 27.05.2018. The resolution permits construction of wall by 5th respondent-temple in the public tank located on the eastern side of the temple. The grievance of petitioner is that the resolution is illegal and contrary to G.O.Ms.No.188 Panchayat Raj and Rural Development (Pts.IV)

dated 21.07.2011. The learned Single Judge during the pendency of the writ petition granted the following interim order:

“Prima facie, the land in survey No.543/1 of Kunkalamarru revenue village, Karamchedu Mandal, Prakasam District is shown to be Tank Poramboku land and therefore the same could not have been alienated, that too by the 4th respondent under the impugned Resolution to the 5th respondent-Temple, as any such alienation is prohibited by the Board Standing Orders.

Therefore, there shall be interim suspension as prayed for”.

5. The appellants submit that 80% of the work is completed and the resolution dated 27.05.2018 is not properly appreciated by the writ petitioner, for the resolution authorizes construction of basement of 10 feet land of the tank and the retaining wall of two feet width to stop seepage of water and also to prevent pollution to the water body. Further, 80% to 90% of the work is completed and at that stage, the writ petition is filed by a villager without disclosing the true and correct facts. The case of either parties is stated for the purpose of appreciating that firstly the petitioner without working out the remedies available under the Panchayat Raj Act and secondly that nearly after five months from the date of passing the resolution has filed the instant writ petition. The Gram Panchayat in its wisdom and in the presence of the elected ward members has passed the resolution. The writ petitioner ought not to have put the resolution to challenge on untenable grounds.

6. Be that as it may, this Court is of the view that to balance the interest of preservation of water body and prevention of encroachment through construction or act contrary to resolution by

5th respondent-temple, we are satisfied that the writ petition can be disposed of by the following order:

The 4th respondent ensures that construction of revetment wall will be in pursuance or in terms of resolution dated 27.05.2018 and also in accordance with the approval and sanction granted by the Endowments Department. The construction of revetment wall by temple shall not be understood as making the encroachment into the water body. The contractor executes the subject work under the supervision of 4th and 5th respondents.

7. The writ petition is, accordingly, disposed of. In view of disposal of the writ petition, the writ appeal is closed as no further order is necessary. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

09th November, 2018

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