

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT
WRIT APPEAL No.1099 OF 2016

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

The W.A. is directed against review WPMP No.18718 of 2015 in W.P. No.16893 of 2009.

The appellant herein filed W.P. No.16893 of 2009 and prayed for a direction not to interfere with the possession and enjoyment of 817.22 square yards of Plot No.2 at Wood Complex, within Ongole Municipality and also prayed for suspending the order of the 2nd respondent herein vide ICM No.ZO/NLR/WC-OGL- 2-09/21541 dated 06.03.2009 etc.

M/s. Sva Krishna Industries/1st respondent herein was allotted the subject matter of W.P. No.16893 of 2009 and the appellant filed another writ petition for appropriate directions not to give power supply to 1st respondent herein. In the said factual premise, the 1st respondent herein filed review WPMP Nos.18718 of 2015 and 18719 of 2015 to review the order dated 20.09.2014 in W.P. Nos.16893 of 2009 and 21046 of 2010.

The ground on which the 1st respondent sought review of the order dated 20.09.2014 is that the 1st respondent herein is a proper and necessary party and the appellant herein filed or continued to

prosecute the prayers in W.P. No.16893 of 2009 and also W.P.No.21046 of 2010 without impelading the 1st respondent. The order under appeal substantially accepted the averments made by 1st respondents and found as follows:

“In the absence of record, this Court proceeded on the assumption that possession from the first respondent was taken by virtue of the orders in IOM No.ZO/NLR/WC- OGL/2/09/21541, dated 06.03.2009, without issuing orders of cancellation and when there were orders protecting the possession of the first respondent. Now from the submission made by the learned counsel for the review petitioner as well as learned counsel for respondent Nos. 4 and 5 and the record produced by respondent Nos.4 and 5, it is clear that after resumption of the land from the first respondent on 07.03.2009, it was allotted to the review petitioner on 23.05.2009 and possession was also given on 22.07.2009. But, the review petitioner was not made a party to W.P.No.16893 of 2009.

Hence, W.P.No.16893 of 2009 is liable to be dismissed not only on the ground that the review petitioner was not made a party, but also on the ground that even before passing of the interim order by this Court in the said Writ Petition on 18.08.2009, the land was allotted and possession was delivered to the review petitioner. Accordingly, W.P.No.16893 of 2009 is dismissed.

As a consequence to the allotment and handing over of possession to the review petitioner, the review petitioner is entitled to take steps for development of the land including obtaining the service connection. In the circumstances, it cannot be held that the action of respondent Nos.2 and 3 in granting service connection to the review petitioner is bad in law. In the result, W.P.No.21046 of 2010 also should fail, and accordingly, it is dismissed.

However, since the review petitioner did not contest the case, though an opportunity was given to him by virtue of he being a party in W.P.No.21046 of 2010 and since his action lead to the filing of the present review petitions, the review petitions are allowed with costs of Rs.5,000/-(Rupees five thousand only), in both the Writ Petitions put together, payable to the first respondent, and the common order dated 20.09.2014 in W.P.Nos.16893 of 2009 and 21046 of 2010 is recalled.”

The circumstances leading to the filing of the review applications are not in dispute and the reasons recorded by the order under appeal, could be challenged either as exceeding the scope of review or that there is no error apparent on the face of the record. This Court in the intra Court appeal does not independently re-examine whether the appellant is entitled to the order which is now reviewed and reversed by the learned Single Judge. In the absence of making out a ground either in law or on fact and particularly, after taking note of the submission of learned standing counsel that the 1st respondent was allotted the plot and without impleading 1st respondent orders were obtained and also that the appellant is entitled to refund of money in accordance with the terms and conditions of allotment order, we are satisfied that the order under appeal is correct and accordingly is sustainable. The amount payable to appellant, if is not paid till date, we direct the 2nd and 3rd respondents to determine the amount payable to the appellant and pay the determined amount within eight weeks from today.

The writ appeal is allowed- in- part as indicted above. No order as to costs.

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

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:25 -09-2018

Note:

C.C. in one week

B/o.

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