

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

**WRIT APPEAL No.1154 of 2018
and
CONTEMPT APPEAL No.31 of 2018**

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

Writ Appeal No.1154 of 2018 is directed against the order dated 10.08.2018 in Writ Petition No.40388 of 2017. Contempt Appeal No.31 of 2018 is directed against the order dated 10.08.2018 in Contempt Case No.521 of 2018.

2. Heard learned Government Pleader for Assignment for appellants and Mr.B.Chinnapa Reddy for respondents. The submissions are made in Writ Appeal No.1154 of 2018. The parties are referred to, as arrayed in Writ Petition No.40388 of 2017.

3. K.Shirisha/writ petitioner prayed for a Writ in the nature of Writ of Mandamus declaring the action of respondent-authorities in dispossessing her from her house bearing No.10-105, Durgapuram H/o. Kesarapalli village, Gannavaram Mandal in an extent of 242 square yards in Sy.No.21 of Kesarapalli village (hereinafter referred to as 'the subject matter') without recourse to law, as illegal, arbitrary and unconstitutional.

4. The case of writ petitioner is that petitioner's mother and grandmother have constructed an asbestos roofed house in the subject matter. The subject matter is claimed as ancestral property of writ petitioner and her family and likewise, the possession of subject matter is claimed for several Decades. On 27.03.2006, petitioner's mother and grandmother, through registered gift deed, gifted the subject matter in favour of the petitioner. The petitioner claims to be in possession and enjoyment of the subject matter. The respondents, without recognizing the settled possession of writ petitioner, are trying to evict her without recourse to law. The respondents cannot and could not evict the petitioner except by issuing a notice in accordance with law. Hence, the writ petition.

5. The 4th respondent/Tahsildar, Gannavaram filed counter affidavit denying material allegations of the affidavit. The gist of the reply is that APIIC vide letter dated 09.03.2017, requested for allotment of Government land measuring Ac.28-27 cents in R.S.No.20-3 of Kesarapalli village, Gannavaram Mandal, for establishing M/s. HCL Enterprises. The writ petitioner is an encroacher of subject matter. On 16.11.2017, the writ petitioner consented to taking possession from her subject to payment of compensation by Government as is done in cases of encroachment etc. On 13.12.2017, the respondents issued notice under Section 7 of A.P. Land Encroachments Act. On 19.12.2017, the petitioner

submitted reply to 4th respondent. On 22.12.2017, order under Section 6 of the A.P. Land Encroachment Act was made. On 27.12.2017, the possession of subject matter is claimed to have been takenover. According to respondents, the proceedings under Land Encroachment Act have become final. Survey No.20-4 is a tank poramboke. The respondents deny the antecedent title of petitioner's family or title claimed through long possession through her mother and grandmother. The gist of the objection is that the proceedings under Land Encroachment Act have become final, therefore, the general prayer in writ petition No.40388 of 2017 ought not to have been considered or allowed.

6. The learned Single Judge, under these circumstances, held that on 27.03.2006, a registered gift deed was executed by writ petitioner's mother and grandmother in favour of the writ petitioner. A genuine dispute is presented for consideration between the rival parties and it can be resolved in a properly instituted suit or proceeding. The petitioner is entitled to resist proceedings under A.P. Land Encroachment Act and consequently set aside the order dated 22.12.2017. Further, through the common order, the learned Single Judge ordered imprisonment of 1st respondent/Tahsildar for disobedience to the Court order.

7. Mr.Korrapati Subba Rao contends that the learned Judge ought not to have examined the legality or otherwise of the orders made under Sections 7 and 6 of A.P. Land Encroachment Act, 1905, firstly, the eviction orders are under challenge, more particularly when the Writ prayer is to declare the action of respondents in dispossessing the petitioner from subject matter without recourse to law as illegal and unconstitutional. According to him, assuming the prayer is accepted in its entirety, still, respondents cannot be prevented from removing encroachment from the subject matter. The steps taken by respondents are steps envisaged by law and the petitioner therefore is dispossessed in accordance with law. By referring to a deed of the year 2006, it could not be contended or presumed that a title dispute subsists between the parties. The writ petitioner ought to have assailed the orders made under Sections 7 and 6 of A.P. Land Encroachment Act instead of working out the general prayer. The findings in the order under appeal are not by referring to pleadings or the record, and hence, prayed for setting aside the order under appeal.

8. Mr. Chinnapa Reddy contends that the respondents could not have unilaterally dispossessed the petitioner, when the possession of writ petitioner is traced through her mother and grandmother for more than three Decades. The very fact that the occupation by petitioner's family was allowed to be continued, the respondents

could not have ordered eviction of writ petitioner in summary proceeding under Land Encroachment Act, 1905. He refers to the compensation amount offered by the respondents including APIIC and alternatively submits that the respondents may be directed to pay compensation as stated by APIIC in the counter filed by it in this Court.

9. We have heard learned counsel for the parties and perused the record.

10. Let us first examine the writ prayer. The writ prayer does not challenge either of the orders under Sections 6 or 7 of the Land Encroachment Act. Consideration of the orders passed under Land Encroachment Act in the present writ petition without challenge to those proceedings and recording findings thereon are untenable. The writ petitioner, if was advised, ought to have filed reply or rejoinder dealing with or replying to the proceedings initiated under Land Encroachment Act. In the absence of a categorical plea touching the legality of proceedings under Land Encroachment Act, consideration of validity of these orders either by the learned Single Judge or by this Court, is untenable and ought to be avoided.

11. Mr.Chinnapa Reddy since informs the Court that the writ petitioner is prepared to receive the compensation paid to persons similarly situated, may be considered by this Court and the

respondents are directed to grant to writ petitioner as well the same benefit. Hence, Writ appeal and the Contempt case are disposed of by this order. The order dated 10.08.2018 in writ petition No.40388 of 2017, for the reasons mentioned above, is untenable and accordingly set aside. The findings recorded by the learned Single Judge in disposing of C.C.No.521 of 2018 depend on the findings already recorded in writ petition No.40388 of 2018. The findings in writ petition since are set aside, the contempt appeal is allowed by setting aside the order dated 10.08.2018 in C.C.No.521 of 2018.

12. From the pleadings, it is evident that the respondents have agreed to pay compensation to persons who have encroached the Government land. Our attention is drawn to the anomaly in the amount offered by the Revenue and the amount offered by APIIC. This anomaly is not decided by this Court on the other hand to meet the ends of justice, the writ petitioner is given liberty to submit representation to respondent Nos.2, 3 and 4 by enclosing a copy of this order for payment of compensation offered to all the encroachers from whom possession is taken by the respondents, and the respondents shall consider and pass orders and make payment of determined compensation as expeditiously as possible, preferably, within Eight (08) weeks from the date of receipt of a copy of the order together with representation.

13. Writ Appeal and Contempt Appeal are ordered as indicated above. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

24th October, 2018

ajr

