

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

WRIT APPEAL No.1227 OF 2018

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

Heard the learned Government Pleader (Land Acquisition) for appellants and Mr.K.S.Murthy, learned counsel for respondents 1 to 14.

The instant writ appeal is directed against the order dated 03.07.2018 in I.A.No.01 of 2018 in W.P.No.22037 of 2018. The order reads thus:

“Pending further orders, respondents shall not interfere with the possession and enjoyment of the petitioners, who are assignees and agricultural labourers, without acquiring and paying compensation to the petitioners under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. 2013.”

Respondents 1, 3 to 5 in the writ petition are the appellants. The respondents assail the interim order on the ground that the order under appeal amounts to a final order passed or adjudication of rights claimed in the writ petition. The order under appeal further pre-supposes that the writ petitioners are assignees and agricultural labourers in possession of an extent of Acs. 201-80 Cts in Sy.Nos.135 and 241 of Vangali Village, Sabbavaram Mandal. According to appellants, the Government, while resuming possession of assigned land under the extant policy, is paying *ex gratia* on market value of the land in possession of the assignees. The direction to initiate land

acquisition proceedings amounts to directing the Government to acquire its own land. The interim order has virtually resulted in grounding a project initiated by the Government for establishing an institute i.e., Indian Institute of Petroleum and Energy at Visakhapatnam at the instance of a few claimants.

The learned Government Pleader draws our attention to the material papers filed by writ petitioners and contends that the order under appeal by referring to such material or annexures placed by the writ petitioners ought not to presume that the writ petitioners are in possession of large extent of Acs.201-80 Cts. According to him, persons who are not in possession of land are stalling the proceedings. He prays for setting aside the order under appeal.

Mr.K.S.Murthy, *per contra*, contends that though the order directs initiating land acquisition proceedings, according to him, the order under appeal is nothing more than a direction issued by the learned Single Judge not to dispossess the petitioners except in accordance with law. To the pointed query of the Court, whether the petitioners have proved by reference to admissible documents that they are in *prima facie* possession of vast extent of land of Acs. 201-80 Cts, Mr.Murthy fairly states that that situation arises as and when counter affidavit is filed and respondents dispute the enjoyment of the writ petitioners. According to him, counter affidavit is not filed and counter affidavit could have been filed instead of filing appeal to the Division Bench. He prays for dismissing the appeal.

We have perused the record and noted the rival submissions. The appeal is against an interlocutory order dated 03.07.2018. We are alive to the grounds or the circumstances under which an intra court appeal against an interlocutory order is firstly entertained and interfered with by this Court. In the case on hand, we would have relegated the appellants to work out the remedy by filing counter affidavit and also a petition to vacate the interim order dated 03.07.2018, but for the fact that through the order under appeal, the learned Single Judge has substantially accepted each one of the assertions made by the writ petitioners without actually stating so and further directed the appellants herein to initiate land acquisition proceedings under Act 30 of 2013.

From the material now placed in the writ appeal, we are convinced that the order now assailed in the appeal virtually amounts to allowing the writ petition without even verifying the extent in possession of the writ petitioners, nature of enjoyment, whether the petitioners are in possession in their capacity as assignees or encroachers etc. These are relevant circumstances for forming the opinion on *prima facie* case etc., for a purpose, including a ground raised under Article 300-A of the Constitution of India. Under these circumstances, the respondents would have been given an opportunity to file counter affidavit instead of passing the order under appeal.

Having regard to the totality of circumstances and the nature of disputes raised by the appellants against the assertions in the affidavit and also the documents on which the writ petitioners are

relying on, we are satisfied that the order under appeal could be set aside and is accordingly set aside. I.A.No.01 of 2018 is remitted for consideration by the learned Single Judge having the roster. The Registry is directed to list I.A.No.01 of 2018 on 13.12.2018. The appellants are given liberty to file counter affidavit within two weeks from today. Keeping in view the apprehension expressed by Mr.Murthy that the interim order if is vacated, the appellants/ respondents may take possession from the petitioners, we clarify that the step, if any, is taken by the respondents, vis-à-vis the subject matter of the writ petition, such step or action is subject to further orders in I.A.No.01 of 2018.

The writ appeal is ordered as indicated 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

03rd December, 2018

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