

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.1309 of 2018

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in WP No.5308 of 2008 dated 31.07.2018.

The petitioners claim to be the owners of the subject property in Sy.No.471/2 of an extent of Ac.0.55 cents at Giddalur Village and Mandal, Prakasam District. It is their grievance that the respondents were forcibly evicting them from the subject property without following the procedure established by law; and their action is, therefore, in violation of Articles 14, 19, 21 and 300-A of the Constitution of India. A consequential direction is sought to the respondents not to interfere with the petitioners' possession and enjoyment of the property in Sy.No.471/2 of an extent of Ac.0.55 cents at Giddalur Village & Mandal, Prakasam District .

In the order under appeal, the Learned Single Judge observed that the petitioners' grievance was that the 1st respondent was trying to evict them from an extent of Ac.0.55 cents in Sy.No.471/2 of Giddalur Village and Mandal, Prakasam District, without issuing any notice to them; the name of the 1st petitioner's father is reflected in the revenue records, and they are in possession and enjoyment of the same; and the respondents had neither issued any notice to the petitioners nor had they passed any orders to the effect that the land belongs to the Government.

The Learned Single Judge took note of the contents of the counter-affidavit that the subject property was classified as 'Kunta Poramboke'; and that the petitioners had no right or title over the subject property. The Learned Single Judge observed that the issue raised in the Writ Petition could not be decided in the exercise of the writ jurisdiction. The writ petition was dismissed granting liberty to the petitioners to establish their right, title and possession before the appropriate Court/Authority.

Sri M. Venkata Narasimha Reddy, learned counsel for the appellants, would draw our attention to the information obtained by the petitioners, under the Right to Information Act, wherein the subject land is classified as vacant patta land. Learned counsel would submit that, in the light of the information furnished under the RTI Act, it is evident that the subject land is not Government land, but is private patta land which the petitioners are entitled to retain in their possession.

The Learned Government Pleader for Revenue (AP), would draw our attention to the counter-affidavit filed by the Tahsildar, Giddalur Mandal, wherein it is stated as under:

"The petitioners entered the land in S.No.473/2B Ac.1.23 unauthorisedly and removed the Japan Babul trees in the Kunta land and formed a road through the Kunta Poramboke land suddenly in the night in the month 2/07. they were originally installed by the then Mandal Revenue Officer, Giddalur fencing the entire Kunta Poramboke land before the Stay orders issued by the Hon'ble High court of Andhra Pradesh, Hyderabad in W.P.no.2284/2006 and action is being initiated to evict the all encroachers mentioned in S.No.473/2B as per the provision of the Land Encroachment Act. I also submit that the Writ petitioner or her men are not in possession of the land in S.No.473/2B and as well as 471/2 of Giddalur Village."

It is her case that, while there are certain encroachments in S.No.473/2B, for which action is being initiated under the Land Encroachment Act, the petitioners claim to be in possession only of the land in Sy.No.471/2, and not in Sy.No.473/2B.

While a detailed reply was filed thereto, the specific assertion that the petitioners are not in possession of the land in Sy.No.471/2 has not been denied therein. In any event, the question whether the petitioners are owners of the subject land, whether they are in possession thereof, having title thereto or as encroacher, are all disputed questions of fact which can be properly adjudicated in a civil suit filed before the competent Civil Court. The Learned Single Judge has not expressed any opinion on merits and has merely relegated the appellant-Writ Petitioners to establish their right, title and possession before the appropriate Court/Authority.

In proceedings under Clause 15 of the Letters Patent, interference is justified if only the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal. The appeal is, accordingly, dismissed. Needless to state that, in case the appellants/petitioners avail their common law remedy, the competent Civil Court shall examine their claim on its merits uninfluenced by any observations made by us in this appeal or by the Learned Single Judge in the order under appeal. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Appeal shall stand closed.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 03.10.2018
 Note: Furnish CC by 08.10.2018
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