

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

WRIT APPEAL No.1357 OF 2018

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

The writ petitioners are appellants. The intra Court appeal is directed against the order dated 24.08.2018, which reads thus:

“Notice before admission.

Government Pleader for Revenue takes notice on behalf of the official respondents.

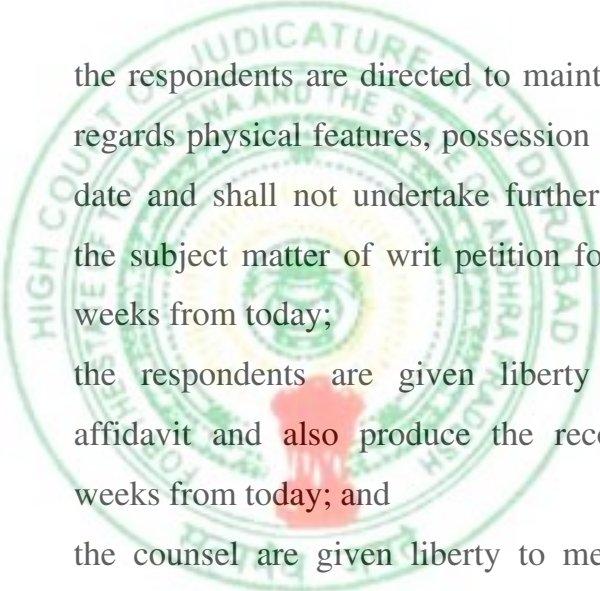
Post after two weeks to enable the Government Pleader to get written instructions or file counter. It is made clear that proposed constructions, if any, in the water bodies shall be subject to result of the writ petition”.

The appellants contend that the writ prayer is against proposed action of respondents herein in constructing houses under a welfare scheme in Sy.No.157/2 which is classified as Sri Krishna Mohanty Tank in an extent of Acs. 17-24 Cts of Natayyapalem Village, Tunglam Revenue, Gajuwaka Mandal, Visakhapatnam District, as illegal and unconstitutional.

It is the case of appellants that since *prima facie* case is made out, notice before admission has been ordered and under those circumstances, the preservation of property which if allowed to be physically changed by constructing houses, then the consideration of writ prayer firstly becomes infructuous and secondly this Court, on being satisfied that the subject matter of the writ petition is a water body, directs demolition of structures made therein, it would be a loss to exchequer. Therefore, the appellants submit that preservation of property till counter affidavit is filed by respondents would meet the ends of justice and balance of convenience is in favour of appellants.

Learned Government Pleader does not dispute the construction now undertaken by respondents, but, however submits that the respondents are not utilizing the water body for undertaking construction of houses under the welfare scheme implemented by the State Government.

We have perused the record, particularly the photographs filed by appellants and we are of the view that allowing the respondents to change physical features results in hardship and irreparable injury. Hence, to preserve the property and also give opportunity to respondents to file counter affidavit and contest the writ petition, the writ appeal is ordered as follows:

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- (a) the respondents are directed to maintain *status quo* as regards physical features, possession of property as on date and shall not undertake further constructions in the subject matter of writ petition for a period of six weeks from today;
 - (b) the respondents are given liberty to file counter affidavit and also produce the record within three weeks from today; and
 - (c) the counsel are given liberty to mention before the learned Single Judge for taking up interlocutory application in W.P.No.30236 of 2018 after third week of October, 2018.

No order as to costs.

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

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

12th October, 2018
Lrkm