

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No.80 of 2018

And

Writ Petition No.43236 of 2017

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri M. Ravindranath Reddy, learned counsel for the appellant, Sri P. Sridhar Reddy, learned counsel appearing on behalf of the 1st respondent, and the learned Government Pleader for Revenue appearing on behalf of respondents 2 to 5 and, with their consent, the Writ Petition itself is being disposed of.

The 1st respondent herein filed W.P. No. 43236 of 2017 seeking a mandamus to declare the action of respondents 1 to 4 therein, (Government of Andhra Pradesh, District Collector, Revenue Divisional Officer and the Tahsildar) in interfering with her possession and enjoyment of the house plot comprised in Survey No.124 of S.V. Palem Village, Bogole Mandal, SPSR Nellore District in respect of which she has been issued possession certificate dated 5.12.2016 by the Tahsildar; and the further action of the Tahsildar in directing her to stop construction of the house undertaken by her in terms of the approved plan, as illegal, arbitrary, unjust and without jurisdiction. By way of interlocutory relief, the 1st respondent-writ petitioner sought a direction to the official respondents not to interfere with her possession and enjoyment of the house plot admeasuring 2½ cents in Survey No.124 of S.V. Palem Village, Bogole Mandal, SPSR Nellore District, or with the house construction of the 1st respondent-writ petitioner in terms of the approved building plan.

The appellant-5th respondent had earlier invoked the jurisdiction of this Court filing W.P. No.32765 of 2017 wherein he sought a mandamus to declare the inaction of the official respondents, in removing illegal construction of the 9th respondent (petitioner in W.P. No. 43236 of 2017),

as arbitrary, illegal and contrary to Sections 98 and 121 of the A.P. Panchayat Raj Act, 1994.

It is the case of the appellant herein that the subject land is classified as 'grazing poramboke', and cannot therefore be assigned to third parties; a possession certificate was illegally granted to the 1st respondent in the year 2016 as she was the Sarpanch of the subject village ever since 2013; and on the basis of such an illegal possession certificate, the 1st respondent-writ petitioner had commenced construction and was raising a building on the land which did not belong to her. W.P. No. 32765 of 2017 was disposed of, by order dated 2.9.2017, and the District Collector was directed to consider the representation made by the appellant and others on 12.7.2017, regarding encroachments and illegal constructions made by the 1st respondent herein (respondent No.9), in accordance with law as early as possible preferably within a period of two weeks. The learned Single Judge further observed that, if necessary, the authorities could inspect the subject premises, and take steps to prevent any further encroachment or construction in the subject land. The 1st respondent herein filed a suit in O.S. No. 267 of 2017 on the file of the Principal Junior Civil Judge, Kavali for permanent injunction restraining the defendants therein (which includes the appellant herein) from interfering with her possession and enjoyment of the house property. I.A. No. 821 of 2017 was filed therein seeking temporary injunction restraining the respondents therein from interfering with her possession and enjoyment of the plaint schedule property. An order of status-quo is said to have been passed by the learned Junior Civil Judge on 1.11.2017 with respect to the petition schedule property.

While Sri M. Ravindranath Reddy, learned Counsel for the appellant, contends that the status-quo order disabled the 1st respondent from proceeding with construction, Sri P. Sridhar Reddy, learned counsel for the 1st respondent, would submit that the order of status-quo was only

regarding possession of the subject land, and it did not disable the 1st respondent from proceeding with construction. The fact, however, remains that, even in the affidavit filed in support of the Writ Petition, it is admitted that the District Collector is causing an enquiry on a notice being issued to the 1st respondent-writ petitioner on 7.11.2017. It is also not in dispute that the said enquiry, being caused by the District Collector, is still pending.

The questions whether the subject land is a 'grazing poramboke', whether the 1st respondent herein is in possession of the subject land for the past 20 years, whether she is entitled for assignment as a landless poor person, whether the possession certificate granted to her by the Tahsildar in 2016 is in accordance with law, and even if it is, whether the possession certificate enables the 1st respondent to raise construction in the absence of the subject land being assigned in her favour, are all questions which the District Collector would examine during the course of his enquiry. The earlier order of this Court required the District Collector to consider the appellant's representation preferably within two weeks and, if necessary, to inspect the premises, and take steps to prevent any further encroachment or construction. The interim order under appeal, in effect, disables the official respondents from taking action in accordance with law as they have now been injuncted from interfering with the possession and enjoyment of the 1st respondent-writ petitioner's house and plot or with the construction being made by her.

While the submission of Sri P. Sridhar Reddy, learned counsel for the 1st respondent-writ petitioner, is that action against the 1st respondent can only be taken in accordance with law, that too after an order is passed and communicated to her, has considerable force, the order under appeal, in effect, prevents the official respondents from passing any such order for, even if any such order were to be passed, consequential action, if any pursuant thereto, cannot be taken in view of the order under appeal.

We consider it appropriate, in such circumstances, to dispose of the Writ Petition itself directing the 3rd respondent herein (District Collector, SPSR Nellore District) to complete the enquiry initiated by him within four weeks from today after giving both the 1st respondent herein, and the appellant, an opportunity of being heard; and, after an order is passed and served on the 1st respondent, it is open to the official respondents herein to proceed and take further action in accordance with law. It is always open to the authorities concerned to pass orders in accordance with law even in the interregnum.

We make it clear that we have not expressed any opinion on the merits of the rival claims, for these are all matters which the District Collector would enquire into and determine in accordance with law.

The order under appeal is set aside. The Writ Appeal and the Writ Petition are disposed of accordingly. All miscellaneous petitions, in the Writ Petition and in the Writ Appeal, do not survive, and they shall stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

25th January, 2018

Note:

Furnish c.c. by 30.1.2018

b/o

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