

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Appeal No.1916 of 2017

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WPMP No. 29037 of 2017 in W.P. No. 23497 of 2017 dated 1.11.2017. The appellants, ten (10) in number, have preferred this appeal against the order of the learned Single Judge refusing to interdict the construction of two bed room flats by the Government of Telangana; in holding that the claim of the appellants-writ petitioners could be examined in the Writ Petition; if they succeeded, they would be entitled for compensation; and any construction of two bed room flats shall be subject to further orders in the Writ Petition.

The relief sought for in the Writ Petition was to issue a mandamus to declare the action of the respondents, in allotting the appellants-writ petitioners' land for the two bed room housing scheme without payment of compensation and without following the procedure contemplated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act"), as illegal and arbitrary.

The subject lands is said to have been declared as a slum under the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 (hereinafter referred to as the "Act"); and the Government is said to have taken up construction of two bed room flats in the subject area not only for the 280 families residing in the said area, but for other beneficiaries belonging to the backward sections of society, after the spouses of

several of these writ petitioners had given their written consent, along with around 280 other residents in the subject area, to give up possession of the subject lands for construction and allotment of two bed room flats in their favour.

While Sri J. Prabhakar, learned counsel for the appellants, would contend that the construction resorted to by the respondents, on the subject lands belonging to the appellants-writ petitioners, is without authority of law, learned Advocate General for the State of Telangana, appearing on behalf of the respondents, would submit that, having consented to delivering possession of the subject land to the Government for construction of two bed room flats therein, the appellants-writ petitioners cannot now be heard to contend that the action of the respondents in doing so is illegal; as the entire area was under encroachment, the appellants-writ petitioners had induced the Government to have the area cleared, for construction of the two bed room flats; and after the area was cleared, they have now turned round and are contending that they should be put in possession of the subject lands.

While the relief sought for in the Writ petition is for payment of compensation under the 2013 Act, the questions whether the appellants-writ petitioners are entitled for compensation under the 2013 Act or under the "Act" and whether, having agreed to give up possession of the land for construction of two bed room flats, they can claim any amount in addition to allotment of a two bed room flat, necessitate examination when the Writ Petition is finally heard.

Sri J. Prabhakar, learned counsel for the appellants-writ petitioners, would submit that apart from these 280 families which are residing in the subject area, around 340 more flats are being constructed for sale to others; and the Government should, at least, be

directed to deposit the said amount in Court to enable the appellants-writ petitioners, in case they were to succeed later, to receive the sale consideration as part compensation instead of making them run around the Government to recover the amount liable to be paid to them in case they were to succeed in the Writ Petition. Learned counsel would further submit that failure, on the part of the appellants-writ petitioners, to refer to the consent letters, given by their spouses, in the writ affidavit would not justify the Government depriving them of their constitutional right under Article 300-A of the Constitution of India; and the learned Single Judge had erred in refusing to grant them interim relief on the ground of suppression of material facts.

While the learned Advocate General would submit that allotment of the two bed room flats in the subject area is only for the weaker sections of society, it is not known whether the Government is allotting these flats free of cost to the beneficiaries (other than 280 families which were hitherto residing in the said area) or whether such allotment is on receipt of consideration. Suffice it, therefore, to direct that, at the time of final hearing of the Writ Petition, the Appellant-respondents shall file an affidavit before the learned Single Judge, disclosing details of the consideration, if any, received by them from those who are allotted these flats.

As the view, which the learned Single Judge has taken while passing the interlocutory order, is only his *prima facie* view, the order under appeal shall not disable the appellants-writ petitioners, when the writ petition is finally heard, to satisfy the learned Single Judge that their failure to refer to the consent letters, given by their spouses, does not amount to suppression of material and relevant facts warranting their being non-suited.

The Writ Appeal is disposed of with the aforesaid observations.
Miscellaneous Petitions pending, if any, shall also stand disposed of.
There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

24th January, 2018

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Date: 24.1.2018

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