

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Appeal No.2014 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 ad interim order passed by the Learned Single Judge in W.P.M.P.No.48536 of 2017 in W.P.No.39123 of 2017 dated 05.12.2017.

In the ad-interim order dated 05.12.2017, the Learned Single Judge observed that, having allotted land to the 1st respondent-writ petitioner on payment of market value in 1991, the District Collector had not ensured that the Tahsildar had implemented his own directive dated 26.04.1992 to take further action by incorporating the changes in the village accounts and as a result the 1st respondent-writ petitioner was disabled from setting up the industry by obtaining finance from financial institutions. While observing that the order passed by the District Collector dated 07.07.2016 could not be sustained, since it was clear that the State Government was trying to take advantage of its own wrong in not facilitating the 1st respondent-writ petitioner to set up an industry, the Learned Single Judge suspended the order dated 07.07.2016 whereby the said land was resumed.

The relief sought for, in the WPMP by the 1st respondent-writ petitioner, is to direct the respondents therein to hand over possession of an extent of Acs.30.00 of land in Survey No.105 of Chevireddipalli Village, Venkatagiri Mandal, SPSR Nellore District to them.

It appears from the show cause notice dated 13.06.2017 that the 1st respondent-writ petitioner was called upon to show cause why an extent of Acs.30.00 of land allotted to them, for construction of a Spinning Mill Complex, should not be resumed to the Government, as they had failed to comply with the conditions stipulated in the allotment

order in not setting up an industry even after a lapse of 24 years. The 1st respondent-writ petitioner submitted their reply on 29.06.2017 which resulted in an order being passed by the District Collector on 07.07.2017 (wrongly typed as 07.07.2016) directing the Tahsildar to resume the land. The fact that the subject land is vacant land, and no industry has been established thereat till date, does not appear to be in dispute.

While the learned Advocate General, appearing on behalf of the State, would submit that the allotment was conditional, and was subject to setting up of an industry within two years; and the 1st respondent-writ petitioner had not even set up an industry till date; Sri G.Jagadeeswar, learned counsel for the 1st respondent-writ petitioner, would contend that the 1st respondent-writ petitioner's failure to set up an industry is because of the failure of the appellants to mutate the 1st respondent-writ petitioner's name in the revenue records which resulted in the financial institutions not extending loans to them. These are all matters which are required to be examined in the writ petition.

As is evident from the prayer in the WPMP itself, whereby the 1st respondent-writ petitioner has sought a direction to the respondents therein to hand over possession, the appellants herein (respondents in the writ petition) have, admittedly, taken over possession of the subject lands. An order directing re-delivery of possession, more so where it is alleged that they had failed to set up an industry within two years, and had failed to comply with the conditions of allotment, could not have been passed without the respondents in the writ petition being afforded the opportunity of filing their counter-affidavit.

Learned Advocate General, appearing on behalf of the State, would submit that the appellants would not change the nature of the

land till 31.01.2018. Recording the said submission of the learned Advocate General, the order under appeal is set aside and the WPMP is restored to file. The appellants herein shall file their counter-affidavit in the writ petition within two weeks from today. It is open to the learned counsel for the 1st respondent-writ petitioner to request the Learned Single Judge to take up the WPMP any day after two weeks.

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

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

02nd January, 2018
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Date: 02.01.2018

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