

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SMT JUSTICE ANIS**

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WRIT PETITION No.32816 OF 2014

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ORDER: (per Hon'ble Sri Justice K.C.Bhanu)

This Writ Petition, under Article 226 of the Constitution of India, is filed to call for the records relating to the order, dated 26.09.2014, in I.A.No.612 of 2014 in Land Grabbing Case No.84 of 2007 passed by the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act,1982, Hyderabad and quash the same.

2. Originally respondent Nos.2 and 3 herein filed the aforesaid Land Grabbing Case to declare that they are owners of the schedule land; that as the petitioners herein are land grabbers to evict them and handover the vacant land to them; that to pay compensation at the rate of Rs.5,000/- per month for wrongful use and illegal occupation of the schedule land and to punish the petitioners under the provisions of the Act. Pending the Land Grabbing Case, the aforesaid Interlocutory Application was filed to appoint Survey Commissioner not below the rank of Assistant Director, Survey and Land Records, to inspect the application schedule property and measure the area quarried and fix boundaries. The Court below after considering the evidence on record, allowed the application and appointed the Assistant Director, Survey and Land Records, East Godavari District at Kakinada, as Commissioner to identify, inspect the application schedule property and note down its physical features.

3. Heard both sides.

4. There cannot be any dispute that under Order XXVI Rule 10 of the Code of Civil Procedure, 1908 a Commissioner can be appointed to note down the physical features when there is a dispute with regard to identity of the property. But, at the same time, Commissioner cannot be appointed to collect the evidence, which is not permissible under law. As seen from the affidavit filed in support of the petition, it is clear that some quarry operation was going on in the schedule land. Therefore, the Assistant Director, Survey and Land Records, East Godavari District, Kakinada, is directed to execute warrant with regard to identity of the property and noting down of physical features of the schedule land only and he cannot collect the evidence i.e.,

volume or quantum of quarry operations, even if the work memos have been given by both the counsel with regard to collection of evidence.

5. With the above clarification, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

OCTOBER 31, 2014

YVL

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE MRS JUSTICE ANIS**

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WRIT PETITION No.32816 OF 2014

DATE: 31.10.2014

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