

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

-

WRIT APPEAL No. 1006 OF 2015

Date: 12.11.2015

Between:

Gurram Bixam

... Appellant

And

Pelapolu Satyanarayana

& others.

... Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No. 1006 OF 2015

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This writ appeal is directed against the order, dated 06.10.2015, passed in W.P.No.18094 of 2015 allowing the writ petition filed by respondent No.1.

Respondent No.1 sought a writ of Mandamus declaring the orders of respondent – Municipality, dated 08.06.2015, whereunder the Municipality had suspended the building permission, dated 09.04.2015, granted in his favour for construction of stilt + ground + two floors in the land admeasuring 315 square yards, Sy.No.797 situated at FCI area, Sagar road, Miryalguda, Nalgonda District, and directed him to stop further construction, as illegal and contrary to the provisions of the A.P. Municipalities Act, 1965.

We have heard learned counsel for the parties and perused the impugned order and the other materials placed before the Court. There seem to be a dispute about the identity of the property. The appellant has obtained an order of injunction in O.S.No.23 of 2015 restraining the 1st respondent from raising any construction in the suit property. Prior to the order of injunction, dated 14.07.2015, obtained by the appellant against the 1st respondent, the 1st respondent obtained permanent injunction against the appellant in respect of the property measuring 315 square yards, Sy.No.797 situated at FCI area, Sagar road, Miryalguda, Nalgonda District.

We have perused the description including boundaries of both the properties mentioned in both the suits. Keeping that in view and having considered the observations made by learned Judge in the impugned order in paragraph 8, we propose to dispose of this appeal with the order, which, learned counsel for the parties have agreed. Before we pass the order, it would be relevant to reproduce paragraph 8 of the impugned order, which read thus;

“Having regard to the allegation made by the respondent municipality that petitioner did not hold possession of total extent of land on which building permission is obtained, liberty is granted to the respondent municipality to issue notice calling upon the petitioner to explain with reference to total extent of land possessed by him, on which building permission was granted and after affording due opportunity to petitioner and third respondent, appropriate orders as warranted by law may be passed. Till such action is initiated and orders are passed, the municipality shall not interfere in the construction activity by the petitioner. However, petitioner shall not deviate from the building permission granted.”

It is open to the 1st respondent, as observed by learned Judge in paragraph 8, to furnish his explanation to the notice that may be issued by the Municipality in pursuance of the observations made in the aforementioned paragraph and it is open to the appellant to make a representation to the concerned authority of the Municipality and place all the materials including the order of injunction, dated 14.07.2015, passed in O.S.No.23 of 2015 for consideration. We hope and trust that the concerned authority shall consider the 1st respondent's explanation and the appellant's representation in proper perspective, as expeditiously as possible and preferably within a period of six weeks from the date of receipt of the said explanation and representation and if the dispute regarding identity of the property is found to be genuine, it may proceed to measure the property at the cost of the parties and fix boundaries. If it is found that the 1st respondent is raising construction on the plot of land, which is the subject matter of O.S.No.23 of 2015, the 1st respondent shall stop the construction forthwith and approach the VIII Additional District Judge at Miryalaguda for appropriate relief in O.S.No.23 of 2015.

It is needless to mention that if the property where the 1st respondent is raising construction is different from the property, which is the subject matter of O.S.No.23 of 2015, it would be open to him to proceed with the construction. However, it would be subject to the outcome of the proceedings before the Municipality and so also the civil Court. It is also needless to mention that the concerned authority of the Municipality and the civil Court where O.S.No.23 of 2015 is pending shall decide the proceedings/suit on merits in accordance with law and uninfluenced by the observations made in this order as well as the impugned order.

With these observations, writ appeal is disposed of.

Miscellaneous petitions, if any, shall also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

Date: 12.11.2015

ES