

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

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL NO.111 OF 2015

DATED:19.2.2015

Between:

P. Gayazuddin
and others ... Appellants

And

The State of Andhra Pradesh
Rep. by its District Collector
Y.S.R. District, Kadapa
and others ... Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

-
WRIT APPEAL NO.111 OF 2015

ORDER: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

Learned counsel for the writ petitioners – respondents appears and submits that the appeal may be disposed of finally.

2. This appeal is directed against the interim order passed by the Hon'ble Trial Judge in the writ petition filed by the writ petitioners – respondents, namely, Shaik Nasreeen and others. In the writ petition it has been alleged that the official respondents, namely, respondent Nos.3 and 4, the Tahsildar and the Circle Inspector of Police concerned, are disturbing and are interfering with lawful construction of the structure on the land the patta of which has been granted in favour of the petitioners. It was contended that the said patta is still valid and subsisting and it has not been cancelled and hence so long as the patta remaining valid and subsisting, no one can interfere or obstruct enjoyment of the property in question by the petitioners.

3. On the other hand, learned counsel for the appellants contended that selfsame plot of the land has been purchased by the appellants. Such contention is denied and disputed by the learned Lawyer for the writ petitioners – respondents.

4. In any view of the matter, the Hon'ble Trial Judge without considering the *prima facie* case and balance of convenience, passed an ad interim order without issuing any notice to the appellants.

5. According to the learned counsel for the appellants the

impugned ad interim order, without complying with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, which has been adopted by the Writ Rules of this Court, is not legally sustainable. No reasons have been recorded as to why service of notice as mentioned in the aforesaid Rule was dispensed with. Even *prima facie* case has not been considered. It is a cryptic interim order of stay.

6. Learned counsel for the writ petitioners - respondents, on the other hand, says that the land belong to his clients on the strength of a patta they are constructing dwelling units and the Tahsildar and the Circle Inspector in collusion with the appellants are disturbing and obstructing the writ petitioners.

7. After hearing both the learned counsel, we find force in the argument of the learned counsel for the appellants that by virtue of the Writ Rules, the provision of Order XXXIX Rule 3 of CPC are applicable and the same is set out hereunder:

“Rule 3. Before granting injunction Court to direct notice to opposite party:- *The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:*

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant -

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with -

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies; and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an

affidavit stating that the copies aforesaid have been so delivered or sent."

8. It is thus clear that ordinarily the Court shall not grant any injunction or interim relief as prayed for without issuing notice to the adversary, but the Legislature has carved out an exception when without issuing a notice, an order of injunction can be passed. The word 'shall', succeeding the word 'Court' in the proviso, clearly denotes that it is mandatory. The Court has to form an opinion with reasons that the object of granting injunction would be defeated by delay, in event prior notice is served, then in that case, without giving any notice to the opposite party, an ad interim *ex parte* order can be passed. According to us, it is not a mere legal formality and it is the duty of the Court. But, we feel that in which case and under what circumstances, an ad interim order can be granted is the duty of the Court to examine and take decision. In this case, the Hon'ble Trial Judge has not recorded any reasons as a result, has failed to discharge the duty as mentioned in the proviso. The Court has to act on the assistance of the learned Lawyers and we think that such assistance was not rendered properly as a result mandatory requirement envisaged in the law has not been fulfilled. On this ground alone we would have set aside the order and remanded for fresh hearing. We think in this case instead of taking recourse to the sort of measure, we examine this case whether ad interim order was warranted at all.

9. Going by the materials, it appears to us that if prior notice were served on the appellants, the writ petitioners - respondents would not suffer irreparable loss because of alleged stoppage of construction for one or two days, nor there would have been grave affectation worth mentioning. Under these circumstances, we think, in this case, the Hon'ble Trial Judge was not justified to issue an ad interim order of injunction without issuing prior notice. It is not a case where

exceptional provision as explained could be invoked. The aforesaid legal position has been explained by the Supreme Court in *Shiv Kumar Chadha v. Municipal Corporation of Delhi*^[1].

10. Now we examine whether the Hon'ble Writ Court should have entertained the writ petition or not. It appears in the garb of alleged over action of the official respondents protective order is passed by the Writ Court against private individuals. The allegations in the writ affidavit, in our view, in reality directed against the appellants - unofficial respondents. There is no material in this case to hold that there has been over action of the official respondents to show interference has been made illegally by the official respondents.

11. We think the order asking the official respondents to act in accordance with law, in the fact and situation in this case, would suffice and we order accordingly. The parties will be free to approach appropriate forum to get their inter se disputes as regards title and possession settled before appropriate Civil Court. It is also open for the parties to ask for interlocutory orders in the form of injunction or in any other form before appropriate Court. In view of this judgment, nothing remains to be adjudicated in the writ petition. It would therefore be open for the writ petitioners, or for that matter the parties concerned, to get the writ petition disposed of technically.

12. The writ appeal is accordingly disposed of. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

19.2.2015

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Note: L.R. copy to be marked.

[\[1\]](#) (1993) 3 SCC 161