

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

Writ Appeal No.1055 of 2014

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DATED:11.02.2015

Between:
Arava Sudha Rani,
Rajahmundry,
East Godavari District.

... Appellant

And

Rajahmundry Municipal Corporation,
Represented by its Commissioner,
Rajahmundry and another.

....Respondents

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

Instead of taking up the miscellaneous application filed for vacating the interim order earlier granted on 25.7.2014, we feel that the writ appeal itself can be taken up for consideration. Accordingly, by the consent of the parties, the writ appeal is disposed of finally.

The short facts of the case are as follows:

The unofficial respondent before us filed the writ petition alleging inaction against the Rajahmundry Municipal Corporation in spite of making complaint against the appellant for constructing building unauthorizedly in deviation of the sanctioned plan and building Rules.

The learned trial Judge while considering the statements and averments in the writ petition and also the material annexed thereto and oral submission, came to the conclusion that there has been an unauthorized construction. The learned trial Judge has also noticed that the appellant before us has made an application for regularization of the unauthorized constructions and this application has not also been considered and disposed of.

We have seen the impugned order of the learned trial Judge

and we are in agreement with the arguments of Mr. Satyam Reddy, learned senior counsel that the learned trial Judge should not have gone into the merits of the case as on a reading of the prayer of the writ petition, it appears that no such prayer was made. The writ petitioner did not ask for a relief of demolition order by the writ Court and asked for a writ of mandamus for activating the Municipal Corporation pursuant to the complaint made by him. However, ultimately, the learned trial Judge passed appropriate order which was required according to the learned Trial Judge in this case with adverse observations and findings. We are of the view at this stage it was not called for at all. We therefore set aside the same. We however pass the following.

We direct the 1st respondent-Municipal Corporation to take up the application for regularization, and the complaint for unauthorized construction analogously and give a notice of hearing to the writ petitioner as well as the appellant before us. After hearing them and after considering the material placed before the Commissioner, appropriate order shall be passed. While doing so, the Commissioner shall examine whether regularization in a matter of deviation and unauthorized construction is possible or not under the law and after deciding the matter, if it is found that regularization of any extent is not possible, obviously, the complaint for unauthorized construction has to be heard out and decision has to be taken thereon. The entire exercise shall be completed within eight weeks from the date of communication of this order. In the meantime, the interim order passed by this Court earlier shall continue provided the appellant carries out the following order of injunction.

The appellant is restrained from making any construction and further construction in the structure or inducting any person

either as licensee or tenant or occupant and further using any built up area in any manner. The rent or occupation charges at present received from any person, who has already been inducted, shall be kept in a bank account and shall not be appropriated till the disposal of the matter by the respondent-Corporation as above.

It is made clear that the observations and findings of the learned trial Judge will not be a binding and influencing factor in taking decision in the matter.

The writ appeal is accordingly disposed of.

Consequently, the miscellaneous applications, if any pending, shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,
J

11th February, 2015

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