

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MRS JUSTICE ANI S

L.P.A.No.5 of 2016

JUDGMENT: (Per Hon'ble Sri Justice V. Ramasubramanian)

This Letters Patent Appeal arises out of an order passed by the learned Judge in a contempt petition filed by the 1st respondent herein.

Heard Mr. Vedula Venkata Ramana, learned Senior Counsel appearing for the appellants.

The 1st respondent herein filed a writ petition in W.P.No.28398 of 2015 on the file of this Hon'ble Court seeking to issue a Writ of Mandamus to direct the State Government and the Statutory Development Authorities, to consider her representations and to take action against the appellants herein so as to stop the illegal construction allegedly made by them. The appellants herein were impleaded as respondents 8 and 9 to the writ petition.

It appears that the writ petition was disposed of at the stage of admission itself, without notice to respondents 8 and 9 (appellants herein), on the basis of a report filed by the Assistant City Planner of the Greater Hyderabad Municipal Corporation dated 3.11.2015. It appears from the order of the learned Judge dated 17.11.2015 passed in W.P.No.28398 of 2015 that the Court was satisfied about the steps allegedly taken by the Assistant City Planner for the removal of the alleged illegal constructions. Consequently the writ petition was disposed of to the following effect.

“From the aforesaid report submitted by respondent No.4, this Court is convinced that effective measures are being taken by the officials of the GHMC to prevent illegal constructions by respondent Nos.8 and 9. Therefore, no further adjudication of the writ petition is necessary except to the extent of giving a direction to

respondent Nos.2 to 7 to ensure that respondent Nos.8 and 9 do not carry on further construction without permission and also to remove the unauthorized constructions carried on by them after following due process of law.

Subject to the above directions, the writ petition is disposed of

As a sequel to disposal of the writ petition, W.P.M.P.No.36823 of 2015 filed by the petitioner for interim relief shall stand disposed of as infructuous.”

Thereafter, the 1st respondent herein filed a contempt petition in C.C.No.393 of 2016, alleging willful disobedience of the order of the learned Judge. Notice in Form-I was ordered in the contempt petition and the appellants herein appeared personally before the learned Judge on 26.08.2016. Apart from appearing before the learned Judge, the 1st appellant herein seems to have filed an affidavit of undertaking before the learned Judge. The affidavit of undertaking stated in simple terms that the appellants undertook to remove the unauthorized constructions. The affidavit of undertaking did not elaborate on what those unauthorized constructions were.

However the learned counsel appearing for the appellants appear to have agreed before the learned Judge that the expression unauthorized constructions are referable to the constructions referred to in the report dated 17.07.2016. We do not know whether the learned counsel took instructions from his clients, to make such a statement or not.

Be that as it may, the learned Judge passed orders on 26.08.2016 in the contempt petition, directing the authorities to remove the unauthorized constructions within three days. Aggrieved by the said order the appellants are before us.

Though prima facie the grievance of the appellants appears to be justified that on an order passed without notice to them, they cannot be held guilty of any willful disobedience, we think the appellants should first

approach the learned Judge clarifying their position. Since an affidavit of undertaking was filed before the learned Judge and also since the learned counsel for the appellants appears to have explained the affidavit of undertaking before the learned Judge, it is not fair to the Court to entertain the appeal at this stage. Therefore, the appeal is disposed of permitting the appellants to move the learned Judge explaining the circumstances underwhich the affidavit of undertaking was filed and also explaining as to what they meant by unauthorized constructions and as to how the counsel got it referable to the report dated 17.07.2016. It is needless to say that it is always open to the contemnors to contest the maintainability of the contempt petition in the light of the fact that the writ petition was disposed of without notice to them and also only on the basis of a report filed by the 4th respondent in the writ petition. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE ANIS

22nd September, 2016
Js.

Note: Issue C.C. today.