

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI**

Writ Appeal No.855 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the 5th respondent in W.P.No.12642 of 2016. The writ petition was filed by the 1st respondent herein. By way of interim relief the 1st respondent-writ petitioner sought a direction to the Manduvavaripalem Gram Panchayat to take action against the appellant herein (5th respondent in the writ petition).

In the interlocutory order, in W.P.M.P.No.15844 of 2016 in W.P.No.12642 of 2016 dated 26.04.2017, the Learned Single Judge observed that as, *prima facie*, the allegations made by the petitioner were not controverted, and the material placed on record disclosed that the survey number was within Manduvavaripalem Gram Panchayat, the 2nd respondent therein was incompetent to grant permission. The appellant herein (5th respondent in the writ petition) was directed to refrain from making any further constructions in the subject property.

The reference to the 2nd respondent, in the order under appeal, is evidently erroneous, as the Manduvavaripalem Gram Panchayat is the 3rd respondent in the writ petition, and not the 2nd respondent. Be that as it may, the interim order was passed by the Learned Single Judge on the ground that the allegations made by the petitioner were not controverted. The Learned Single Judge has noted, in the order under appeal, that no counter-affidavit was filed by the official respondents or by the appellant herein (5th respondent in the writ petition).

Sri Sita Ram Chaparla, learned counsel for the appellant (5th respondent in the writ petition) would submit that a counter-affidavit had, in fact, been filed before the Learned Single Judge even by the date on which the interim order came to be passed, and the Learned Single

Judge has, therefore, erred in holding that no counter-affidavit was filed or that the allegations made by the petitioner have not been controverted.

Smt N.Sasikala, learned counsel for the 1st respondent-writ petitioner, while fairly stating that a counter-affidavit had been filed by the 5th respondent before the Learned Single Judge prior to the date on which the interim order under appeal was passed, would contend that the contents of the counter-affidavit would have made no difference, and the Learned Single Judge was justified in passing the order under appeal.

The order under appeal is based on the premise that no counter-affidavit was filed by the appellant (5th respondent in the writ petition) which is, admittedly, factually incorrect. As the attention of the Learned Single Judge has not been drawn to the counter-affidavit filed by the appellant (5th respondent in the writ petition), we are satisfied that the order under appeal necessitates being set aside.

The order under appeal is set aside and W.P.M.P.No.15844 of 2016 in W.P.No.12642 of 2016 is restored to file. It is open to the 1st respondent-writ petitioner to request the Learned Single Judge to take up the WPMP for grant of interim relief.

The Writ Appeal stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

27th July, 2017

Note: Issue C.C. tomorrow.

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Date: 27.07.2017

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