

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

Writ Petition No.6406 of 2017

Between:

Gautam Chand Chordia and 6 others

... PetitionerS

And

Smt.Majida Hasany and 8 others

... Respondents

JUDGMENT PRONOUNCED ON 02.3.2017

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SMT JUSTICE T.RAJANI

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No

3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes/No

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.RAJANI

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> Head Note:

! Counsel for the Petitioners: Mr.Kishore Rai

^ Counsel for the respondents: Mr.V.Eswaraiah Chowdhary

? Cases Referred:

1. 2017 ALD 655 (DB)
2. 2016 (6) ALT 491 DB

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

Writ Petition No.6406 of 2017

Date: 02.03.2017

Between:

Gautam Chand Chordia and 6 others

... Petitioners

and

Smt.Majida Hasany and 8 others

... Respondents

Counsel for the Petitioners: Mr.Kishore Rai

Counsel for the respondents: Mr.V.Eswaraiah Chowdhary

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed against Order, dated 10-02-2017, in IA.No.186 of 2016 in LGOP.No.263 of 2017 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad.

We have heard Mr.Kishore Rai, learned Counsel for the petitioners, and Mr.V.Eswaraiah Chowdhary, learned Counsel for respondent Nos.1 to 7.

Respondent Nos.1 to 6 filed LGOP.No.263 of 2017 to declare the petitioners as land grabbers in respect of the petition schedule property. Along with the OP, they have filed the aforesaid IA under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for grant of interim injunction restraining the petitioners herein and respondent No.7 from making further construction. By the impugned order, the lower Court has granted interim injunction while ordering notice to the petitioners. Feeling aggrieved by this order, respondent Nos.1 to 7 in the LGOP filed this Writ Petition.

At the hearing, Mr.Kishore Rai, learned Counsel for the petitioners, advanced three submissions viz., (i) that the lower

Court has straight away allowed the application for injunction and granted interim injunction as prayed for; (ii) that even assuming that the impugned order is interim in nature, the Court below has failed to comply with the mandatory requirements of Rule 3 of Order XXXIX CPC; and (iii) that the lower Court has failed to consider the IA for injunction by applying the well-known parameters of *prima facie* case, balance of convenience and irreparable injury.

In support of his submission, the learned Counsel has placed reliance on **Dr.KL.Narayana vs. Special Tribunal u/A.P.Land Grabbing Prohibition Act, 1982-cum-Chief Judge, City Civil Courts, Hyderabad and others¹**.

Mr.V.Eswaraiah Chowdhary, learned Counsel for respondent Nos.1 to 6, submitted that by the impugned order, the lower Court has granted *ad interim* injunction; that the words “petition is allowed” were mentioned by inadvertent mistake by the lower Court and that a reading of the order in its entirety makes it clear that the lower Court has granted an *ad interim* injunction until further orders. The learned Counsel further submitted that since the impugned order of injunction is *ex parte* in nature, the Civil Miscellaneous Appeal does not lie. In support

¹ 2017 ALD 655 (DB)

of his submission, he has placed reliance on the judgment of this Court in **Jagadamba Phosphate vs. Coromandel International Ltd., Secunderabad**². The learned Counsel further submitted that the lower Court has discussed the *prima facie* merits of the case; that it was satisfied that his clients deserve an *ad interim* order and that therefore, the impugned order does not warrant interference by this Court.

We have carefully considered the submissions of the learned Counsel for the parties with reference to the record.

As regards the first submission of the learned Counsel for the petitioners, undoubtedly, the words in the concluding portion of the impugned order “In the result, the petition is allowed” would indicate that the Court below has disposed of the petition. However, if we read the order as a whole, these words appear to be the result of an inadvertent error committed by the lower Court. The sentences preceding and following these words would make it clear that the Court below has intended the impugned order to be passed purely as an interim order and not as a final order. The said portion of the order reads as under:

“Hence, in the above circumstances, interim injunction is granted in favour of the petitioner

² 2016 (6) ALT 491 DB

restraining the respondents from making any further construction in the schedule property until further orders.

In the result, the petition is allowed restraining the respondents from making further constructions until further orders. Issue urgent notice to respondents through courier and speed post.” (emphasis supplied)

Though the lower Court has not properly applied its mind in using the words the petition is allowed, as we cannot read this portion in isolation and having regard to the remaining portion of the order as extracted above, we have no hesitation to hold that by the impugned order, the lower Court has only granted an *ad interim* injunction while keeping the IA pending.

With regard to the second submission of the learned Counsel for the petitioners, Rule 3 of Order XXXIX CPC mandates that before granting an injunction, the Court has to direct notice to the opposite party. However, this provision carved out an exception where the Court is empowered to grant an *ad interim* order of injunction without giving notice of the application to the opposite party and in such an event, it shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay. This provision makes issuance of notice a rule and grant of an *ex parte* injunction order an exception. Wherever the Court chooses to follow the

exception, it has to necessarily comply with the mandatory requirement of recording reasons for its opinion that the object of granting injunction would be defeated by delay. A perusal of the impugned order shows that nowhere the Court below has referred to the aspect of necessity to grant an *ex parte* injunction and that by issuing notice the object, with which the injunction petition was filed, would be defeated. Therefore, in our opinion, the impugned order does not conform to the mandatory requirement of Rule 3 of Order XXXIX CPC.

As regards the third submission of the learned Counsel for the petitioners, an Application for injunction is considered by the Courts on the well-known parameters of *prima facie* case, balance of convenience and irreparable injury. But, nowhere in the impugned order, the lower Court has discussed these elements.

In **Dr.KL.Narayana** (1 supra), one of us (CVNR, J) speaking for a Division Bench *inter alia* held as under:

“An order of injunction is a double edged weapon, in that, while it is a boon for a party litigating bona fide, it is a bane for a party who suffers such order at the instance of the other party, unleashing speculative and vexatious litigation. Unfortunately the Special Court which has failed to observe the inherent lacunae and weaknesses in the case of respondent Nos.2 to 7, has chosen to grant a comprehensive order of injunction

having far-reaching consequences. It has failed to discuss the three elements of *Prima facie* case, balance of convenience and irreparable injury before granting the order of injunction.”

As regards the submission of the learned Counsel for respondent Nos.1 to 6 on the maintainability of the Civil Miscellaneous Appeal against the impugned order, this Court in **Jagadamba Phosphate** (2 *supra*) held as under:

“7. Dealing with the scope of an appeal arising out of an *ad interim* injunction order, a Division Bench of this Court in *Innovative Pharma Surgical's v. Pigeon Medical Devices (P) Ltd. and others*, 2004 (3) ALD 228 (DB) = 2004 (4) ALT 8 (DB), held that as a matter of course, no appeal lies against an *ad interim* injunction order, except in extraordinary circumstances, as to the non-compliance of the mandatory provisions, or the rarest of the rare cases, where the order is perverse or bias or it suffers from lack of jurisdiction.

...

...

10. Since the impugned order contains reasons, it satisfies the requirements of the proviso to Rule 3 of Order-XXXIX CPC. Therefore, applying the tests indicated in *Innovative Pharma Surgical's* case (*supra*), we are of the opinion that it is not a fit case for entertaining the appeal against the *ad interim* injunction order.”

In our opinion, the judgment in **Jagadamba Phosphate** (2 *supra*) does not come to the aid of respondent Nos.1 to 7 for the

reason that the lower Court has failed to comply with the mandatory requirement of Rule 3 Order XXXIX CPC.

On a thorough consideration of the impugned order, we are of the opinion that the Court below has committed a serious jurisdictional error in failing to comply with the mandatory requirement of Rule 3 of Order XXXIX CPC and also in not discussing the essential elements of *prima facie* case, balance of convenience and irreparable injury for granting an *ad interim* injunction even without notice to the petitioners.

For the afore-mentioned reasons, the impugned order cannot be sustained and the same is, accordingly, set aside. The lower Court is directed to dispose of the IA on merits keeping in view the observations made herein before and after hearing both parties.

As a sequel, WPMP.No.7839 of 2017, filed by the petitioners for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 2nd March, 2017
Note:
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