

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

Writ Appeal No.282 of 2016

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 33151 of 2015 dated 10.12.2015. The third respondent in the writ petition has preferred the present appeal. Respondent Nos. 1 to 4, in this appeal, filed the Writ Petition to declare the proceedings of the appellant dated 12.3.2015 in rejecting the respondents-writ petitioners' applications for grant of building permission, in not taking into consideration the judgment and decree passed in O.S. No. 161 of 2010, and in referring to the prior proceedings of the District Collector, Mahaboobnagar to take possession of the respondents-writ petitioners' plots, as illegal, void, without jurisdiction and violative of principles of natural justice.

O.S. No. 161 of 2010 was filed by the 1st respondent herein, against the State of Andhra Pradesh, the Andhra Pradesh Khadi and Village Industries Board, and the Khadi Gramodyoga Sangham, for declaration of title and for grant of perpetual injunction. The said Suit was decreed by order dated 3.10.2012.

In the order under appeal, the learned Single Judge observed that the proceedings of the appellant-Municipality could not be sustained. He directed the appellant-Municipality to re-consider the applications of the respondents-writ petitioners for building permission on the strength of the decree dated 3.10.2012 in

O.S. No. 161 of 2010, without reference to the letter dated 29.10.2002 of the District Collector, Mahaboobnagar, and to take a fresh decision and communicate the same to the respondents-writ petitioners.

While the District Collector is said to have earlier directed the Sub-Registrar not to register the subject plots as they belonged to the Khadi Gramodyoga Sangham, the appellant herein issued proceedings dated 12.3.2015 informing the respondents-writ petitioners that, since registration of the plots was irregular, no legal document of their having purchased the subject property from the Khadi Gramodyoga Sangham was furnished, and as the site under reference was in dispute, their request for grant of permission could not be acceded to.

While it is no doubt true that this contention is no longer available to the appellant as a ground of rejection, since the suit in O.S. No. 161 of 2010 was decreed on 3.10.2012 against the Khadi Gramodyoga Sangham also, it is necessary to note that, in the counter affidavit filed before this Court, the appellant has stated that, originally, the lay-out owner had left Plot Nos. 22 and 28 towards open space, for a public purpose to the Gram Panchayat, Shadnagar; thereafter the layout owner had sold the said two plots and, in exchange, had left two plots 74 and 75 to the Gram Panchayat; two other plots 80 and 81 were also in the possession of the Municipality; and the same were being safeguarded, after being fenced on the instructions of the District Collector, Mahaboobnagar. The claim of the appellant is that these plots are earmarked for open spaces, title of which hitherto vested in Gram Panchayat, and subsequently in the appellant-municipality.

As the order, impugned in the writ petition, makes no reference to these issues, the learned Single Judge was justified in setting aside the impugned order. The fact, however, remains that, since the appellant has been directed to reconsider the applications of the respondents-writ petitioners for grant of building permission on the strength of the decree in O.S. No. 161 of 2010 dated 3.10.2012, and as neither was the appellant a party to the said Suit nor did these issues arise for consideration therein, the order passed by the learned Single Judge would disable the appellant from exercising their right over the subject plots which they claim are earmarked as open spaces.

While we see no reason to interfere with the order of the learned Single Judge directing the appellant to reconsider the applications of the respondents-writ petitioners, suffice it if the order under appeal, to the limited extent the appellant was directed to reconsider the applications of the respondents-writ petitioners strictly in terms of the decree in O.S. No. 161 of 2010 dated 3.10.2012, is set aside.

The appellant shall, within two weeks of receipt of a copy of this order, put the respondents-writ petitioners on notice of their claim that the subject plots are earmarked for open spaces in the layout which vests in the Gram Panchayat/municipality, give the respondents-writ petitioners an opportunity of being heard, and thereafter re-consider their applications for grant of building permission in accordance with law. The entire exercise, culminating in a fresh order being passed, shall be completed within two months from the date of receipt of a copy of this order.

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

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

10th November, 2017

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