

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT APPEAL NO.1367 OF 2017

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 WP.MP.No.32500 of 2017 in WP.No.28321 of 2017 dated 23.08.2017 granting interim suspension as prayed for. The relief sought in the WPMP, by the first respondent-writ petitioner, was to suspend the operation of the proceedings of the Commissioner of Prohibition and Excise dated 11.08.2017, permitting shifting the appellant-fourth respondent's shop to the premises next to the petitioner in Nellipudi Village of Vakadu Mandal, SPSR Nellore District.

Sri O.Manohar Reddy, learned counsel for the appellant, would submit that, pursuant to the order impugned in the Writ Petition dated 11.08.2017, the appellant-fourth respondent had already shifted the shop on 14.08.2017; he has been carrying on business at the new premises ever since; and it is only, thereafter, that the order of interim suspension was passed by the learned Single Judge. Learned counsel would draw our attention to the amended Rule 4 of the Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 ("the Rules" for brevity), to submit that the Commissioner has the power to notify shops for a Mandal; it is always open to any licensee to locate his shop any where within the Mandal; the requirement of Rule 28(3) of the Rules, for reasons to be assigned for permitting

shifting of shop, has been complied with in the present case; the Commissioner has passed a reasoned order; the appellant has paid license fee in excess of Rs.11.00 lakhs; and, if he is not permitted to run the shop in the present location, he would suffer irreparable loss and injury which cannot be compensated, even if the Writ Petition were to be dismissed later.

Sri M.Balaji, learned counsel for the respondent-writ petitioner, would submit that the order passed by the learned Single Judge is an *ad interim* order; the appellant-fourth respondent has already filed a petition to vacate the stay; the Commissioner was not justified in permitting shifting of the shop of the appellant to the area where the petitioner's shop is located; merely because there was a public agitation, did not justify shifting of the location of the shop; even with respect to the respondent-writ petitioner's shop there was a public agitation; and the interim order of suspension only disables the appellant from shifting his shop, and not from carrying on business in the earlier location.

When we asked him why this Court should entertain an appeal under Clause 15 of the Letters Patent against an *ad interim* order, as the appellant can as well seek vacation of the interim order, Sri O.Manohar Reddy, learned counsel for the appellant, would request us to decide the Writ Petition itself contending that, though a petition has been filed to vacate the interim order, huge pendency of cases before the learned Single Judge has resulted in the vacate stay petition, filed by the appellant, not being taken up for hearing.

The Learned Single Judge is not a Court subordinate and, in an intra-Court appeal under Clause 15 of the Letters Patent,

interference would be justified only if the order under appeal suffers from a patent illegality. As the rival contentions are required to be examined by the learned Single Judge based on the averments in the writ affidavit and in the counter affidavit filed by the appellant, it would be wholly inappropriate for us to make any observation on merits as the petition to vacate stay is still pending consideration before the learned Single Judge.

Considering the fact that any delay in the vacate stay petition being taken up may well result in irretrievable injury being caused to the appellant in the interregnum, we consider it appropriate to restrict the earlier interim order of suspension to remain in force only till 10.10.2017. It is open to the appellant and the respondent-writ petitioner to request the learned Single Judge to take up the vacate stay petition for hearing early. We have no reason to doubt that the learned Single Judge would give any such request its due consideration. It is also open to the respondent-writ petitioner to request the learned Single Judge for extension of the interim order granted earlier, in case the matter is not taken up for hearing before 10.10.2017.

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

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

18th September 2017
RRB