

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.467 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 W.P.No.126 of 2017 dated 16.03.2017. The appellant herein is the petitioner in the writ petition wherein he sought a mandamus to declare the action of the 2nd respondent, in not disposing of his application for grant of Form-B licence under the provisions of the Telangana Petroleum Products (Licensing and Regulations of Supplies) Order, 1980, as illegal and arbitrary. A consequential direction was sought to the 2nd respondent to grant Form-B licence forthwith.

In the order under appeal the Learned Single Judge noted that the right in the land, which was the subject matter of the present controversy, was also the subject matter of O.S.No.660 of 2014 on the file of the I Additional Senior Civil Judge, Warangal instituted by the 4th respondent; it was also the subject matter of O.S.No.226 of 2014 on the file of the VII Additional District Judge, Warangal filed by the 7th respondent and others; in both the Suits, the appellant-writ petitioner was arrayed as one of the defendants; in both the Suits, the Civil Court had granted temporary injunction restraining the defendants from changing the physical features of the property, and from raising further construction thereon, until further orders; there was no dispute on the reality of the order of injunction or that they were in force; it is evident from the plaint in O.S.No.660 of 2014 that the sale deed dated 09.11.2011, which formed the basis of the petitioner tracing his right to the property, was under challenge; and though the Civil Court had granted injunction orders long ago, there was no evidence on record to

show what steps the appellant-petitioner had taken to assail the order of injunction.

The Learned Single Judge further observed that, after maintaining silence for nearly two years, the appellant-writ petitioner had submitted representations dated 11.11.2016 and 13.11.2016 requesting the respondent-authorities to grant Form-B licence on the ground that W.P.No.26873 of 2014, filed by the 7th respondent before this Court, was dismissed as withdrawn; and there was no unreasonableness on the part of the authorities in not processing the application of the appellant-writ petitioner for grant of Form-B licence, nor had the appellant-writ petitioner made out any case warranting interference of this Court under Article 226 of the Constitution of India. The Learned Single Judge made it clear that it was open to the appellant-writ petitioner to pursue the Suits before requesting the respondent to grant Form-B licence.

The submission of Sri O.Manohar Reddy, learned counsel appearing on behalf of the appellant-writ petitioner, is that, even in the written statement filed by them in O.S.No.660 of 2014, the appellant-writ petitioner had stated that he had completed construction of the petroleum pump; the order of temporary injunction restrained him from changing the physical features of the property, and from raising further construction; he had already completed construction by then, and had already changed the physical features of the property; grant of Form-B licence would only enable him to put the petroleum pump, already constructed by him, to use; respondents 4 and 7, who had filed the aforesaid Suits, had filed Writ Petitions before this Court; in W.P. No.26873 of 2014, filed by the 7th respondent, there was an interim order of stay; the said Writ Petition was subsequently dismissed as withdrawn by order dated 03.11.2016; the appellant-writ petitioner submitted representations immediately thereafter on 11.11.2016 and 13.11.2016; and the Learned Single Judge erred in rejecting the appellant-writ

petitioner's request on the ground that he had maintained silence, without any reason, for nearly two years.

It does appear, from the material papers filed along with the writ appeal, that the 7th respondent, along with others, had filed W.P.No.26873 of 2014 and it was dismissed as withdrawn by order dated 03.11.2016. As the contention of Sri O.Manohar Reddy, learned counsel appearing on behalf of the appellant-writ petitioner, that an interim order was in force during the pendency of W.P.No.26873 of 2014 is not in dispute, it is evident that the appellant-writ petitioner could have submitted a representation only after dismissal of the said writ petition on 03.11.2016, and not prior thereto. The appellant-writ petitioner submitted a representation within ten days thereafter to the authorities concerned. It does appear that the Learned Single Judge was not made aware of the pendency of W.P.No.26873 of 2014 on the file of this Court, and the interim order which was in force till the writ petition was dismissed on 03.11.2016. The conclusion of the Learned Single Judge, that there was no reason for the petitioner not to make a representation for two years, is therefore not justified.

While Sri O.Manohar Reddy, learned counsel appearing on behalf of the appellant-writ petitioner, would contend that the appellant-writ petitioner is entitled for grant of a licence as the order of temporary injunction does not disable him from operating the petroleum pump, Sri J.Kanakaiah, learned counsel for respondent No.4, would contend otherwise, and state that several other contentions raised by the 4th respondent have not been examined by the Learned Single Judge; and, while the order of the Learned Single Judge non-suiting the appellant-writ petitioner merely on the ground of delay may not be justified, the Learned Single Judge was justified in directing that the Suits be first decided before the application submitted by the petitioner, for grant of Form-B licence, was examined.

As the only ground which weighed with the Learned Single Judge is the delay of two years in submitting a representation which, as stated hereinabove, is unfounded, all the learned counsel (Sri O.Manohar Reddy, learned counsel appearing on behalf of the appellant-writ petitioner, the learned Government Pleader for Civil Supplies appearing for respondents 1 and 2, and Sri J.Kanakaiah, learned counsel for the 4th respondent) would agree that the matter be remanded for the consideration of the Learned Single Judge on other issues.

As all the learned counsel are in agreement, the order under appeal is set aside. W.P.No.126 of 2017 is restored to file, and shall be heard and decided afresh, in accordance with law.

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)

(DR. SHAMEEM AKTHER, J)

13th April, 2017
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Date: 13.04.2017

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