

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NOS.343 AND 395 OF 2017

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Both these appeals are preferred against the common order passed by the learned Single Judge in WP.No.9362 of 2013 dated 07.12.2015. The appellants herein have preferred these appeals after seeking leave of this Court to do so.

The respondent-writ petitioner filed WP.No.9362 of 2013 to declare the inaction of the respondent in implementing G.O.Rt.No.343 R&B (R.VI) Dept. dated 31.03.2012 by widening the road, by issuing appropriate notices as per the observations in WP.No.21242 of 2012 dated 11.12.2012, as arbitrary and illegal. This Writ Petition was heard along with WP.No.24405 of 2013 filed by the wife of the petitioner in WP.No.9362 of 2013 seeking a similar relief.

In the order under appeal, the learned Single Judge, having taken note of the counter-affidavit filed by the Commissioner of the Anantapur Municipal Corporation in WP.No.21242 of 2012, held that the tenor of the counter affidavit showed a totally indifferent attitude of the Corporation to the encroachments; on the one hand, it is averred therein that the encroachments were causing serious obstruction to the traffic and, on the other hand, nothing was suggested by the deponent of the counter affidavit as to what measures would be taken for removal of the encroachments; such a lackadaisical attitude of a public servant of a responsible Corporation was deplorable; the Commissioner, who filed the

counter affidavit, seemed to be oblivious of his responsibility to ensure that the encroachments were removed in order to see that the traffic flowed freely; on the showing of the Commissioner of the Municipal Corporation, the State Government had sanctioned Rs.125 lakhs for removal of the encroachments, and widening of the road; and it was incomprehensible as to what were the factors that restrained respondent Nos.2 and 3 from implementing the said G.O., more so when the writ petitions, filed by the encroachers, were dismissed by the Court. The Writ Petitions were allowed, and respondents 2 and 3 therein were directed to remove all the encroachments as identified by the Tahsildar, Anantapur, referred to by the Revenue Divisional Officer, Anantapur, in his letter dated 22.11.2008 addressed to the Executive Engineer of Roads & Buildings (R&B), Anantapur, and any further encroachments that may have come up after the said identification, by following the due process of law and communicate the action to the petitioners within a period of three months.

Sri P.Rajesh Babu, learned counsel for the appellants, would submit that the order under appeal was passed in a Writ Petition wherein the appellants were not arrayed as respondents; all the appellants were accorded building permission by the Municipal Corporation, and it is only thereafter that they had constructed buildings; no notice under Section 405 and 406 of the GHMC Act was served on them; the respondents merely claim that the notice was affixed to their building; the appellants have valid pattas; and as the said order was passed without giving them an opportunity of being heard, the order under appeal is liable to be set aside.

On the other hand, Sri Kasa Jaganmohan Reddy, learned counsel for the writ petitioner, would draw our attention to the earlier order passed by the learned Single Judge in WP.No.21242 of 2012 dated 11.12.2012 wherein the second appellant herein was the first petitioner to contend that, since the appellants have encroached on government lands on the basis of fake pattas, the order under appeal does not necessitate interference; and the official respondents were not taking any action despite the order under appeal.

In his order, in WP.No.21242 of 2012 dated 11.12.2012, the Learned Judge took note of the contents of the counter affidavits filed by the Municipal Corporation and the Tahsildar, Anantapur that the subject lands were not the subject matter of grant of any patta in favour of the predecessors-in-title to the petitioners, and the contention of the petitioners therein that they be provided an opportunity to contest the correctness of the pattas granted by the revenue establishment of the district administration earlier in favour of their predecessors-in-interest. The Learned Judge opined that the petitioners therein should be allowed to pursue the alternative remedy available to them under law. The aforesaid order of the learned Single Judge, in WP.21242 of 2012 dated 11.12.2012, would bind the second appellant herein; and any grievance which she may have, with regards the validity of the patta issued in favour of her predecessor-in-title, can only be agitated elsewhere and not in Writ proceedings under Article 226 of the Constitution of India.

The fact, however, remains that, while dismissing the Writ Petition granting liberty to the petitioners therein to pursue their

alternative remedy, the learned Single Judge had also observed that the Municipal Corporation shall serve an appropriate notice before actually undertaking demolition of any structures in the process of widening the national highway passing through Anantapur. We find considerable force in the submission of Sri P.Rajesh Babu, learned counsel for the appellants, that, as the building constructed by the appellants herein were sought to be demolished, they ought to have been arrayed as respondents in the Writ Petition at least to ascertain whether or not the Municipal Corporation had served notices upon them, and had thereafter chosen not to undertake the exercise of demolition. We are, however, saved the trouble of directing the Writ Petition to be heard afresh as copies of the notices, allegedly affixed on the buildings of the appellants, have been handed over to Sri P.Rajesh Babu, learned counsel for the appellants, who has acknowledged receipt of the notices from the Municipal Corporation; and requests this Court to grant the appellants two weeks time to file their reply thereto.

Learned Government Pleader for Revenue (Assignment), Andhra Pradesh, on instructions from the Tahsildar, who is also present in the Court, would submit that the genuineness of the pattas, which the petitioners claim were issued to their predecessors-in-title, is doubtful as the records relating to these pattas are not available in the office of the Tahsildar; the pattas are fake; in terms of para 4(2)(a) of BSO 15, the L.F. Road classification is prohibited as it is a town site; and the roads were prohibited from being assigned.

If, as is now contended by the Revenue, the pattas issued to the appellants-predecessors-in-title is fake, then, as possession of the appellants over the subject land is admitted, it would mean that they are encroachers over the subject lands. Even then they are entitled to be put on notice, and be given an opportunity of being heard before they are evicted from the subject lands. We deem it appropriate, therefore, to modify the order of the learned Single Judge, in so far as the appellants herein are concerned, and pass the following order.

The Tahsildar, Anantapur, shall, within two weeks from today, put the appellants on notice regarding their alleged encroachment over the subject land calling upon them to vacate. The appellants shall, within three weeks from the date of receipt of the notice, furnish their reply to the Tahsildar. The Tahsildar shall, within four weeks from the date of receipt of the appellants reply to the show cause notice, pass orders thereupon, communicate the same to the appellants, and thereafter take action in accordance with law. The entire exercise, culminating in an order being passed and action being taken, shall be completed within three months from today.

As the copy of the notice under Section 405 and 406 of the GHMC Act has been handed over across the bar today to Sri P.Rajesh Babu, learned counsel for the appellants, who acknowledges receipt thereof, it would suffice if the appellants are permitted to submit their reply to this notice within two weeks from today, and the Municipal Corporation is directed to pass orders thereupon within two weeks thereafter and to take necessary action in accordance with law. The entire exercise,

culminating in an order being passed, and action being taken by the Municipal Corporation in accordance with law, shall be completed within a period of six weeks from today.

Both the Writ Appeals are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

3rd April 2017

NOTE: Issue CC by Thursday
B/O
RRB

