

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.299 of 2017 & Writ Petition No.10571 of 2016

COMMON 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.M.P.No.13311 of 2016 in W.P.No.10571 of 2016 dated 14.12.2016. The appellant herein is the petitioner in the writ petition. They filed the writ petition seeking a mandamus to declare the proceedings of the Appellate Authority dated 18.01.2016, in rejecting their claim for grant of freehold rights in respect of plot bearing No.18/2, Azamabad Industrial Area, Hyderabad, and to declare the action of the respondents in not granting free hold rights to the said plot for conversion into freehold rights to the appellant-writ petitioner, as illegal and arbitrary. A consequential direction was sought to direct the respondents to grant them free hold rights. The interim order sought in the writ petition was also to direct the respondents to grant them free hold rights.

While grant of interim relief, no doubt, would have resulted in the final relief itself being granted, the submission of Sri G.Vidya Sagar, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, is that the Appellate Authority had failed to take into consideration the contentions urged by the appellant-writ petitioner before him and, instead of keeping the writ petition pending on the file of this Court, it would suffice if the order of the Appellate Authority is alone set aside, and the matter is remanded for his consideration afresh.

In the order under appeal the Learned Single Judge rejected the contention of the appellant-writ petitioner that the order of the Appellate Authority suffered from non-application of mind and, therefore, held that the matter did not require re-consideration.

Sri G. Vidya Sagar, learned Senior Counsel, would draw our attention to the order of the Appellate Authority dated 18.01.2016 wherein, after noting the contentions urged by the appellant-writ petitioner on the validity of the order of the Original Authority in paragraph 11, the Appellate Authority dealt with those contentions in paragraph 12. Learned Senior Counsel would refer to the letter of the Commissioner of Industries dated 24.02.2004 informing the appellant-writ petitioner that they could submit an application for being accorded free hold rights duly exempting them from payment of fees as applicable for this purpose, and that a press notification had been issued on 17.02.2004 calling for applications from the Occupant Industrialists, for grant of free hold rights as per the 2000 Amendment Act, who were carrying on industrial activity as on the appointed date i.e 17.02.2000. Learned Senior Counsel would submit that, while the appellant-writ petitioner had relied on the letter of the Commissioner of Prohibition and Excise dated 17.02.2000 and the letter of the General Manager, District Industries Centre dated 17.06.2006, in support of their claim that their unit was running as on the appointed date, the Original Authority had relied on an inspection conducted on 18.04.2004 to come to the conclusion that the unit was not in use. Learned Senior Counsel would also point out the conclusion of the Appellate Authority that, under Section 4 of the 2000 Amendment Act, only a fresh lease could be granted and the application for grant of free hold rights was invalid. He would refer to the provisions of the 2000 Amendment Act to submit that an application for grant of free hold rights can also be made; and the order of the Appellate Authority suffers from non-application of mind.

While the learned Government Pleader, appearing on behalf of the learned Additional Advocate General, placed strong reliance on the findings of the Original Authority, to contend that the unit was not even functional on the date on which the Act came into force i.e 17.02.2000, and the inspection disclosed that it was an open plot of land and the

appellant-writ petitioner did not even produce their drug licence to show that they were carrying on operations on the appointed date, these are all matters which the Appellate Authority under the Act ought to have considered.

In proceedings under Article 226 of the Constitution of India, this Court would not sit in appeal over the decision of the Appellate Authority. The scope of examination in writ proceedings is limited to an enquiry whether the contentions urged before the Appellate Authority were considered by him, and dealt with in accordance with law. Not only did the Appellate Authority fail to take into consideration the aforesaid proceedings, he has proceeded on the erroneous premise that no application, for grant of free hold rights, could be made at all.

We are satisfied that the contentions urged by the appellant-writ petitioner before us have not been dealt with by the Appellate Authority in the order under appeal. We consider it appropriate, therefore, to set aside the order of the Appellate Authority, and remand the matter for his consideration afresh and in accordance with law. We make it clear that we have not expressed any opinion on the submission made by Sri G.Vidya Sagar, learned Senior Counsel, and the Appellate Authority shall consider the appeal on its merits, deal with the contentions raised by the appellants therein, and pass orders afresh in accordance with law, uninfluenced by any observations made by us in this order.

Sri G.Vidya Sagar, learned Senior Counsel, would seek an opportunity of oral hearing and to file additional written submissions. The Appellate Authority shall, before passing an order afresh, grant the appellant-writ petitioner an opportunity of an oral hearing, and to file additional written submissions.

Both Sri G.Vidya Sagar, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, and the learned Government Pleader, appearing on behalf of the learned Additional Advocate General, would agree that, in the light of the order now passed by us, the cause in

the writ petition does not survive. Both the Writ Appeal and the Writ Petition are disposed of accordingly. The Appellate Authority shall pass an order afresh, and in accordance with law, with utmost expedition and, in any event, not later than six months from the date of receipt of a copy of this order. 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)

22nd March, 2017
JSU



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



Writ Appeal No.299 of 2017 & Writ Petition No.10571 of 2016

Date: 22.03.2017

JSU