

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.1392 of 2008

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.9701 of 2008 dated 30.06.2008. The appellant herein is the 2nd respondent in the writ petition. Respondents 1 and 2 herein filed the writ petition seeking a mandamus to declare the inaction of the GHMC (1st respondent in the writ petition) in considering the respondent-writ petitioners' representation, and in taking action to demolish the deviation in the construction made by the appellant-2nd respondent, as arbitrary and illegal.

In the order under appeal, the Learned Single Judge noted the submission of the learned Standing Counsel that the report submitted by the Deputy Commissioner, GHMC showed that the construction was in deviation of the sanction plan; when the GHMC initiated proceedings for demolition of the unauthorised structure, the appellant-2nd respondent had approached the Civil Court, and had obtained temporary injunction; and, thereby, the GHMC was prevented from proceeding further. The Learned Judge, therefore, observed that, as and when the interim injunction order passed against the GHMC was vacated, steps for demolition of the unauthorised constructions, made by the appellant-2nd respondent, shall be taken in accordance with the provisions of law. The writ petition was disposed of directing the GHMC to take steps for demolition of the unauthorised construction made by the appellant-2nd respondent in accordance with the provisions of law, as and when the

interim injunction granted in favour of the appellant-2nd respondent was vacated.

Sri P.Srinivas, learned counsel for the appellant, would submit that the order under appeal only precluded the GHMC from demolishing the subject structure till the order of interim injunction was in force; even if a decree of permanent injunction is passed by the Civil Court later, the order under appeal would still require the GHMC to demolish the structures; as the Suit relates to the year 2007, and a regularisation scheme was introduced thereafter, even if an application has been filed for regularisation, the GHMC would still be obligated to demolish the structure in compliance with the order of the Learned Single Judge; and, therefore, the order under appeal necessitates being set aside.

The apprehension expressed by Sri P.Srinivas, learned counsel for the appellant, is unfounded. The order of this Court only required the GHMC to take action for demolition of the unauthorised construction in accordance with law, that too, after the interim injunction granted by Civil Court is vacated. Needless to state that, even if the order of injunction is vacated, the GHMC is obligated to put the appellant-2nd respondent on notice, and give him an opportunity of being heard, before undertaking the exercise of demolition. It is always open to the appellant herein to inform the GHMC that no action should be taken for demolition of the subject structure, either on the ground that a decree of permanent injunction has been passed by the Civil Court or an application for regularisation is pending or that the deviations have already been regularised by the GHMC. That does not, however, justify keeping the writ appeal pending on the file of this court.

Suffice it to make it clear that the order under appeal does not mandate the GHMC to demolish the structure, and only requires them to initiate action for demolition in accordance with law. Any action which the GHMC may take, to demolish the subject structure, can only be after putting the appellant herein on notice, and after giving him a reasonable opportunity of being heard.

Subject to the above observations, the Writ Appeal is disposed of. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

18th April, 2017
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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
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Date: 18.04.2017

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