

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1095 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 interlocutory order passed by the Learned Single Judge in W.P.No.20880 of 2017 dated 30.06.2017. The appellant herein is the 3rd respondent in the writ petition. The relief sought for in the writ petition is for a writ of mandamus to declare the action of the appellant herein, in not granting building permission to the respondent-writ petitioners, as illegal and arbitrary; and to consequently direct the GVMC to consider their application for building permission without reference to the letter addressed to the District Cooperative Officer dated 15.06.2016.

In the order under appeal the Learned Single Judge observed:-

“Taking into consideration the facts and circumstances of the case, the respondents are directed to grant permission to the petitioner for construction, on petitioner filing an affidavit informing that he will not claim any equity or create any third party right in the construction made by him as per the sanctioned plan, and it will be subject to the outcome of the writ petition.

Post the matter on 28.07.2017.”

This order was passed after the appellant had filed their counter-affidavit in the writ petition. None of the contentions in the counter-affidavit have even been noted much less dealt with in the order under appeal. Further this Court, in the exercise of its powers of judicial review, would ordinarily not issue a mandamus to the appellant to grant permission to the respondent-writ petitioners for construction, as these are all matters which the Commissioner, GVMC is required to decide. The respondent-writ petitioners have, in fact, only sought a mandamus to direct the Commissioner, GVMC to consider their request for grant of building permission.

While Sri O.Manohar Reddy, learned counsel for the respondent-writ petitioners, would submit that all the contentions now urged before us were also urged before the Learned Single Judge, the fact remains that, since the said order was passed after a counter affidavit was filed by the appellant herein, the rival contentions ought to have been noted and dealt with; and it is only if the contentions, urged on behalf of the appellant, were found not to merit acceptance, could the relief sought for in the writ petition, i.e for the application of the respondents herein to be considered, have been granted. The effect of the *ad-interim* order is that a relief, which goes even beyond what was sought for in the writ petition, has been granted. The order under appeal must be, and is accordingly, set aside. It is open to the respondent-writ petitioners to request the Learned single Judge to take up the writ petition “for admission” early.

The Writ Appeal stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

07th August, 2017
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI



Writ Appeal No.1095 of 2017

Date: 07.08.2017

JSU