

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal Nos.191 and 193 of 2017

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard the learned Government Pleader for Revenue (Assignment) and Sri P. Roy Reddy, learned counsel for the respondents-writ petitioners. These appeals, under Clause 15 of the Letters Patent, are preferred against the orders passed by the learned Single Judge in W.P.M.P. Nos.3271 and 3314 of 2017 in W.P. Nos.2786 and 2825 of 2017 dated 27.1.2017.

The respondents-writ petitioners filed W.P. Nos. 2786 and 2825 of 2017 seeking a writ of mandamus to declare G.O. Ms. No.197 dated 5.5.2016, in so far as it related to their lands, as illegal, arbitrary and, consequently, to set aside the same. By G.O. Ms. No.197 dated 5.5.2016, the Government exercised the powers conferred on it under Section 22-A(1)(e) of the Registration Act, 1908 (for short "the Act"), and prohibited registration of the properties shown in the annexure to the said G.O. The action of the Government in including the petitioners' assigned lands in the prohibitory order book, which in turn would have required the registration authority not to register these lands, was put in issue in the writ petitions.

By the interlocutory orders under appeal, the learned Single Judge, following a similar interim order passed earlier, suspended G.O. Ms. No.197 dated 5.5.2016 in so far as it related to the petitioners' lands, and directed the 4th respondent-Sub-Registrar to register and release the documents if the same were in order in terms of the Indian Stamp Act, 1899. The interim order, directing the 4th respondent-Sub-Registrar to register the documents, could only have been passed if, and after, G.O. Ms. No.197 dated 5.5.2016 was set aside. As the relief sought for in the Writ Petitions is to set aside the said GO, the learned Single Judge has,

in effect, granted the final relief sought for in the Writ Petition by way of an interlocutory order. While an interlocutory order granting final relief can no doubt be passed, in exceptional circumstances, in the present case the order was passed at the stage of admission without the appellants herein being given an opportunity of filing their counter affidavit.

While the learned Government Pleader for Revenue (Assignments) would contend that the petitioners have not stated in the writ affidavits as to how they had purchased the subject lands from the original assignees, Sri P. Roy Reddy, learned counsel for the respondents-writ petitioners, would submit that G.O. Ms. No.197 dated 5.5.2016 was issued only in compliance with the judgment of the Full Bench of this Court in **Vinjamuri Rajapala Chary and others vs. State of Andhra Pradesh**¹; the judgment of the Full Bench was carried in appeal to the Supreme Court in **Siri Nivasam Mutual Aided House Building Society Limited vs. State of Andhra Pradesh** (SLP (C) C.C. Nos. 8917 of 2016, 9313 of 2016 and 9562 of 2016); by the order dated 12.5.2016 the Supreme Court, while condoning the delay and granting permission to file the Special Leave Petitions, had issued notice; and the Supreme Court had made it clear that registration could be done expressly making it subject to the final outcome of the Special Leave Petitions.

The question which arises for consideration in the present appeals is not whether an interim order, similar to the one passed by the Supreme Court, could have been passed by the learned Single Judge, but whether an interim order, granting the main relief sought for in the Writ Petition could have been passed at the stage of admission of the Writ Petition, without giving the appellants herein (respondents in the writ petitions) an opportunity of being heard. Grant of an interim order, which has the effect of allowing the writ petition itself, though permissible in exceptional circumstances, could only have been passed

¹ 2016(1) ALT 550 (F.B.)

after the respondents were given the opportunity of being heard. It is not as if deferring passing the interim order, which is under challenge in this appeal, by two weeks, to enable the appellants (respondents in the writ petitions) an opportunity to file their counter affidavits, would have caused irretrievable injury to the respondents-writ petitioners herein. All that would have happened is to postpone registration of the sale deeds by a couple of weeks even in case the learned Single Judge, after hearing the respondents and on examining the contents of the counter affidavits, were still to hold the view that an interim order, directing the respondents to register the documents, should be passed.

We are satisfied that an interim order, which in effect amounts to grant of the main relief sought for in the Writ Petition, could not have been passed, that too at the stage of admission, without giving the appellants-respondents an opportunity of being heard. The orders under appeal are set aside, and the W.P.M.Ps. are restored to file. The appellants herein shall file their counter affidavits in the writ petitions within two weeks from today. It is open to the respondents-writ petitioners to request the learned Single Judge to take up the W.P.M.Ps. any day after two weeks.

The writ appeals are 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 February, 2017

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