

THE HON'BLE THE ACTING CHIEF JUSTICE
RAMESH RANGANATHAN

&

THE HON'BLE SMT JUSTICE T. RAJANI

WRIT APPEAL No.451 of 2015

JUDGMENT: (Per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in WP.No.18440 of 2014 dated 27.01.2015. The first respondent herein, a senior citizen aged 75 years when the appeal was filed, had filed the said writ petition seeking a mandamus to declare the action of the respondents in demolishing her mulgies and house in Sikhwadi, Karimnagar without acquiring the same under the provisions of the Land Acquisition Act, 1894 (for short 'the Act'), and without paying compensation, as illegal and violative of Article 300-A of the Constitution of India. A consequential direction was sought to the respondents to initiate land acquisition proceedings, and pay compensation as per the Act.

Before the learned Single Judge, the appellant herein contended that the respondent-writ petitioner had demolished the building on her own accord. In the order under appeal, the learned Single Judge observed that the only issue to be considered was whether the petitioner had given her consent to the proposed road widening scheme which affected a portion of her house; the third respondent corporation had stated, in its counter, that, as per the resolution dated 06.03.2010, the corporation had conducted meetings with affected persons on 12.05.2011, and 20.05.2011, in order to convince them of the circumstances in which they would be deprived of their properties,

and the necessity of the proposed road; it was further stated that the owners, including the petitioner, had given their consent for handing over their affected portion for road widening purpose without claiming any compensation; this itself showed that the third respondent corporation had not denied the title and construction of the shops and residential portions; the third respondent corporation had further stated that consents were obtained before undertaking the road widening programme; when a copy of the consent letter was asked to be produced, some other proceedings of the meetings, in which the petitioner's signature is not found, were produced, and no such consent letter was found therein; the third respondent corporation had made blatantly false statements in the counter affidavit; and the third respondent corporation, being a public authority, was not expected to file such false affidavits before the Court.

The learned Single Judge further observed that the other defence taken by the third respondent corporation, that the petitioner had herself demolished the structures on her own accord and she was not entitled to compensation was not acceptable; it was unbelievable that the petitioner herself would have demolished the structures having obtained status quo orders in another writ petition challenging the G.O. issued by the Government for road widening; officials of the third respondent corporation had acted high handedly in laying the road without following the procedure envisaged in law; officers of the third respondent corporation were not expected to take the law into their own hands, and demolish properties of citizens; and though the petitioner had sought payment of compensation or for

allotment of alternative shops, the issue of payment of compensation was not being taken seriously by the officials of the third respondent corporation.

The learned Single Judge held that the action of the third respondent corporation in laying the road, on the petitioner's property, without following the procedure envisaged in law was arbitrary, illegal and in violation of Article 300-A of the Constitution of India. The third respondent corporation was directed to take necessary steps for allotment of shops to the petitioner as per its resolution dated 14.09.2013 within a period of three weeks from the date of receipt of a copy of the order and, in case the third respondent corporation was unable to allot shops as per the above resolutions within the aforesaid period, it should take steps for payment of compensation within three months thereafter. In view of their insensitive and adamant attitude, the learned Single Judge imposed exemplary costs of Rs.25,000/- on the third respondent corporation directing them to recover the said amount from the salary of the concerned officials.

Before us, the learned Additional Advocate General would submit that the respondent-writ petitioner had encroached upon the public road; it is only to this extent that the third respondent Corporation had sought to take steps to remove the encroachment; the petitioner had demolished the building on her own accord, and had sought to shift the blame on to the third respondent Corporation; in any event, the learned Single Judge could not have directed the appellant-corporation to allot shops as it goes even beyond the relief

sought for in the writ petition; and imposition of exemplary costs of Rs.25,000/- was wholly unwarranted.

On the other hand, Sri Y. Rama Rao, learned counsel appearing on behalf of the respondent-writ petitioner, would submit that the petitioner owned 13 mulgies; the corporation had demolished the building over an extent of 10 feet beyond the then existing road, leaving just around 5 feet land remaining; the petitioner cannot put this 5 feet of land and the demolished building to any use; it is in such circumstances that the learned single Judge had directed the corporation to allot alternate shops within three months, failing which to pay compensation; and such a direction was issued only because several others were allotted alternate shops by the appellant-corporation.

The contention, urged on behalf of the appellant-corporation, that the respondent-writ petitioner had demolished the building on her own accord, is only to be noted to be rejected. This contention is belied by the averments in the counter affidavit itself wherein it is stated that, as per the consent given by the petitioner herself the appellant-corporation started removing the balcony encroached portion; the petitioner again came and protested for removing the affected portion of the remaining building; and the municipal corporation had partly removed the road affected area and had stopped. It is evident from the counter affidavit that the appellant-corporation had demolished the building, though they claim to have done so at the petitioner's request. The stand taken by them later, before the learned Single Judge, is that the petitioner had herself

demolished the building. As has been rightly observed by the learned Single Judge, in the order under appeal, no sane person would demolish her own building, after having invoked the jurisdiction of this Court earlier and having obtained an order of status quo therein, and then throw the blame on the corporation. The learned Single Judge, in our view, was justified in coming to the conclusion that this contention was wholly unfounded, and the building was high-handedly demolished by the appellant-corporation.

The right of the appellant-corporation to remove structures, for the purpose of road widening, is traceable to Sections 145 to 147 of the Greater Hyderabad Municipal Corporation Act. While Section 146 provides for acquisition of immovable property by agreement, Section 147 enables acquisition of property in terms of the Land Acquisition Act, 1894 which is now replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The order of the learned Single Judge, in directing allotment of alternate mulgies to the petitioner, appears to be based on the resolution of the appellant-corporation dated 14.09.2013. While the said relief, no doubt, goes beyond the relief sought for in the writ petition, it also does appear that the appellant-corporation was given the choice of either allotting alternate mulgies or to pay compensation. There was no compulsion on the appellant-corporation to provide alternate mulgies and, in case, they were not inclined to do so, it was always open to them to pay compensation after acquisition of the subject properties, in accordance with law, which, failing agreement under Section 146 of the GHMC Act, can only be in

accordance with the provisions of the Land Acquisition Act i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force on 01.01.2014. The learned Single Judge was also justified in imposing exemplary costs of Rs.25,000/- on the appellant-corporation leaving it open to them to recover the same from concerned officials' salary. Interference in an intra-court appeal, under Clause 15 of the Letters Patent, is justified only if the order of the learned Single Judge suffers from a patent illegality. We find no such infirmity in the order under appeal.

The writ appeal fails and is, accordingly, dismissed. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, HACJ

T. RAJANI, J

July 11, 2017
DSK