

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE Dr. SHAMEEM AKTHAR**

WRIT APPEAL Nos. 40 and 51 OF 2017

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

These two appeals are preferred against the common order dated 15.12.2016 passed by the learned Single Judge in W.P.Nos.32351 and 41345 of 2016. The appellants herein are the petitioners in W.P.No.41345 of 2016, and the 4th respondent is the petitioner in W.P.No.32351 of 2016. As the learned Single Judge has referred to the parties as they are arrayed in W.P.No.41345 of 2016, we shall also refer to them accordingly.

While the relief sought for in W.P.No.32351 of 2016 was to declare the action of the respondents, in interfering with the petitioners building being constructed as per the building approved plan vide permit No.1070 dated 02.09.2016, as illegal and arbitrary, the relief sought for in W.P.No.41345 of 2016 is to declare the action of the Municipality, in allowing the 4th respondent therein to raise an industrial shed contrary to the residential building permit No.1070 dated 02.09.2016, as illegal and arbitrary.

Both the writ petitions were disposed of by the learned Single Judge by a common order. In the order under appeal, the Learned Single Judge recorded the undertaking furnished by the 4th respondent, to the Commissioner of the Municipality, on 12.09.2016 and, thereafter, examined the question whether the 4th respondent was competent to undertake construction of the building in a corrugated steel frame structure, with asbestos sheets as the roof, when the original building permission granted was only for an RCC structure. The learned Single Judge noted the submission, urged on behalf of the 4th respondent, that he was constrained to undertake such construction, he intended to apply for a change in

the building plan, and to seek approval of the construction taken up by him; the provisions, referred to by the counsel for the petitioner, made it clear that the construction should be made strictly in accordance with the building plan, and no deviation should be permitted; admittedly, there was a deviation in the nature of construction; and therefore, subject to the 4th respondent applying for a change in the building plan with reference to the nature of construction, and the respondent – Municipality considering such application, the 4th respondent should not undertake any further construction till such permission is granted. The writ petitions were, accordingly, disposed of.

The order under appeal, in effect, injuncts the 4th respondent from proceeding further with the construction till he obtained permission from the municipality for conversion of the building permit. The letter of undertaking dated 12.09.2016, (addressed by the 4th respondent to the Commissioner of the Municipality), records the submission of the 4th respondent that the construction, which he had made in the subject site, was purely for a temporary construction with an ACC roof sheeting for his workers residential purpose only until permanent construction, according to the building permit order issued by the municipality, was made; he undertook that the permanent RCC construction would be considered and constructed, according to the building permit order, leaving all four sides setback spaces; he undertook that there would not be any inconvenience for his neighbours, pedestrians etc., and he would remove all temporary construction before the end of the date of that building permit order; and he undertook that there will not be any commercial activities in that particular premises. He, therefore, requested the authorities not to take further action in terms of the provisional order dated 09.09.2016.

The letter dated 12.09.2016 records the undertaking of the 4th respondent to remove the existing structure, which he claims is a temporary structure raised for the residential purpose of their workers, on completion of construction of the residential building. If that be so, it does not stand to reason that the 4th respondent should claim that he intended to seek conversion of the building permit, granted earlier for a residential purpose, into a building for commercial purposes. Having submitted a letter of undertaking to the authorities not to deviate from the sanctioned plan, and to construct an RCC construction according to the building permit order leaving all four sides setback spaces, the 4th respondent cannot now be heard to contend that, since he intends seeking conversion, the municipality should be prevented from taking action for removal of the construction already made by him.

The building permit, granted to the 4th respondent, by the municipality, is for a three bed room G+1 residential building. The construction being raised by the petitioner is of a shed with a height of more than 20 feet and is, evidently, not a construction to lodge workers till the residential building is completed. This is also clear from the fact that the 4th respondent has now admitted that he intends to seek conversion of the building permit, granted for construction of a residential building, to a building for commercial purposes. Even without an application being made for conversion, the 4th respondent invoked the jurisdiction of this Court, and the order under appeal precludes the municipality from taking action, for the illegal construction made by the 4th respondent, on the premise that he would seek conversion of the building permit later.

The questions whether the 4th respondent is entitled to seek such conversion, and whether the A.P. Municipalities Act and the Regulations made thereunder permit him to seek such conversion, are all matters which the

municipality is required to examine in accordance with law. The only question which arises for consideration, in these writ proceedings, is whether the respondent – municipality should be prevented from taking action against the 4th respondent for the illegal asbestos roof structure raised by him evidently for commercial purpose, more so in the light of his letter of undertaking dated 12.09.2016 that he intends to use this structure only for the residential purposes of his workers till a building was constructed in accordance with the original building permit. As the 4th respondent has not even applied for conversion, there are no proceedings pending before the municipality which can be said to require them not to take further action pursuant to the provisional order dated 09.09.2016. The order under appeal is set aside. The respondent – municipality shall take further action in accordance with law pursuant to the provisional order issued by them on 09.09.2016. Suffice it to make it clear that we have not expressed any opinion on the 4th respondent's entitlement for conversion as these are all matters which the municipality should consider in accordance with law.

Both the appeals are disposed of accordingly.

Miscellaneous petitions, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 18.01.2017
ES