

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.291 of 2017

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

Heard the learned Government Pleader for Revenue (AP) and Sri K.V.Subrahmanya Narusu, learned counsel for the respondent-writ petitioner. This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.M.P.No.41892 of 2016 in W.P.No.33955 of 2016 dated 25.01.2017.

The respondent-writ petitioner filed W.P.No.33955 of 2016 seeking a direction to the 3rd respondent to receive, register and release the document, in respect of the property situated at TS.Nos.1027 and 1197 in Waltair Ward, Visakhapatnam, proposed to be presented by him. 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 validity of the action of the Government in including the respondent-writ petitioner's assigned lands in the prohibitory order book, which in turn would require the registration authority not to register these lands, necessitates examination in the writ petition.

By the interlocutory order under appeal, the learned Single Judge, following a similar interim order passed earlier, directed the 3rd respondent-Joint Sub-Registrar to register and release the documents, presented by the appellant-writ petitioner in respect of the subject property, if the same were as per the requirements of the Registration Act, 1908 and the Indian Stamp Act, 1899. The interim order, directing the 3rd respondent-Joint Sub-Registrar to register the documents, could only have been passed if, and after, the final relief sought for in the writ petition is granted. As the relief sought for in the Writ Petition is to

receive, register and release the documents presented by the appellant-writ petitioner, 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 even though the appellants herein (respondents in the writ petition) had not filed their counter affidavit.

The question which arises for consideration in the present appeal is whether an interim order, granting the main relief sought for in the Writ Petition, could have been passed without giving the appellants herein (respondents in the writ petition) an opportunity of filing their counter affidavit. 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 after the respondents were given the opportunity of being heard. It is not as if deferring passing the interim order, which is under challenge, to enable the appellants (respondents in the writ petition) an opportunity to file their counter affidavits, would have caused irretrievable injury to the respondent-writ petitioner. All that would have happened is to postpone registration of the sale deeds even in case the learned Single Judge, after hearing the appellants (respondents in the writ petition) and on examining the contents of the counter affidavits, were still to hold the view that an interim order, directing the appellants 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, without giving the appellants herein (respondents in the writ petition) an opportunity of filing their counter-affidavit. The order under appeal is set aside, and the W.P.M.P. is 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 respondent-writ petitioner

to request the Learned Single Judge to take up the W.P.M.P. any day after two weeks.

The Writ Appeal is 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)

16th March, 2017

Note: Issue C.C. tomorrow.

JSU



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



Writ Appeal No.291 of 2017

Date: 16.3.2017

JSU