

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1927 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 ad interim order passed by the Learned Single Judge in W.P.M.P.No.50846 of 2017 in W.P.No.40949 of 2017 dated 06.12.2017. Respondents 1 to 3 herein filed W.P.No.40949 of 2017 seeking a mandamus to declare the action of respondents 2 to 5 therein (appellants 2 to 5 herein), in intending to demolish the respondent-writ petitioners' house under construction contrary to the *status quo* order granted by the competent Civil Court in I.A.No.1173 of 2016 in O.S.No.626 of 2016 on the file of X Additional Chief Judge, City Civil Court, Hyderabad dated 13.04.2017, and the building permission accorded by the GHMC vide permit dated 05.05.2016, as illegal and arbitrary.

By way of an interim order, the respondent-writ petitioners sought a direction from this Court to restrain appellants 2 to 5 herein (respondents 2 to 5 in the writ petition) not to interfere, obstruct or create any sort of trouble to stop construction of the residential house, as building permission was accorded by the GHMC vide permit dated 05.05.2016.

This case has had a chequered history. The husband of the 1st respondent herein, and the father of respondents 2 and 3 herein, filed W.P.No.10515 of 2002 to declare the action of the appellants herein, in threatening to dispossess him from his plot admeasuring 300 square yards in Survey No.403/56 (new) of Shaikpet Village and Mandal, Yousufguda, Hyderabad without due process of law, as illegal and arbitrary.

The Learned Single Judge, by order in W.P.No.10515 of 2002 dated 16.10.2008, held that the questions regarding identity of the plot, the

correct survey numbers, and whether title came to be vested in the petitioner therein, constituted disputed questions of fact which this Court would not adjudicate while exercising jurisdiction under Article 226 of the Constitution of India; and the only appropriate remedy, for the petitioner therein, was to approach the Civil Court to seek appropriate relief.

On the demise of the petitioner in W.P.No.10515 of 2002, his legal heirs (widow and children) filed O.S.No.626 of 2016 before the X Additional Chief Judge, City Civil Court, Hyderabad seeking declaration of title and perpetual injunction against the District Collector, Hyderabad and the Tahsildar, Shaikpet Mandal. They filed I.A.No.1173 of 2016 seeking grant of temporary injunction restraining the District Collector, and the Tahsildar, from interfering with their peaceful possession and enjoyment over the petition schedule property pending disposal of the suit.

By his order in I.A.No.1173 of 2016 in O.S.No.626 of 2016 dated 13.04.2017 the learned X Additional Chief Judge, City Civil Court, Hyderabad observed that there was a title dispute; both the parties were claiming title; though the petitioners therein had not filed any valid title deeds, it was the subject matter of the main suit and had to be decided after due trial; the petitioners therein, having obtained the sanctioned plan for construction of the building, may construct a house or other structure over the suit schedule property; in the event of failure of the petitioners-plaintiffs to succeed in the main suit, hardship would be caused to the respondents therein; and, in the circumstances of the case, it was just and proper to direct both the parties to maintain *status quo* in respect of the suit schedule property as on the date of filing of the suit pending disposal of the main suit.

Though the Civil Court had only granted an order of *status quo*, the Learned Single Judge, by the ad interim order under appeal and relying on the very same interim order passed by the Civil Court, directed appellants

2 to 5 herein not to interfere or stop the construction activity, being done by the respondent-writ petitioners, in the subject property. *Prima facie*, the order of *status quo* passed by the Civil Court required both the parties to exercise restraint and disabled the respondent-writ petitioners from resorting to any construction after the order of *status quo* was passed.

Since the ad-interim order under appeal was based solely on the order of *status quo* passed by the Civil Court, the Learned Single Judge ought not to have directed appellants 2 to 5 herein not to interfere or stop the construction activity being undertaken by the respondent-writ petitioners, since the order of the Civil Court disabled them also from resorting to any construction after the date of the order of *status quo*. In any event, the order passed at the stage of admission, in effect, amounts to allowing the writ petition itself without the appellants herein being afforded an opportunity of filing their counter-affidavit.

The order under appeal is set aside, and the WPMP is restored to file. The appellants herein shall file their counter-affidavit within two weeks from today. It is open to Sri V.Surendra Reddy, learned counsel for the respondent-writ petitioners, to request the Learned Single Judge to take up the WPMP any day after two weeks from today.

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)

(GUDISEVA SHYAM PRASAD, J)

18th December, 2017
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



Writ Appeal No.1927 of 2017

Date: 18.12.2017