

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Appeal No.1977 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 interim order passed by the Learned Single Judge in W.P.No.33320 of 2017 dated 11.12.2017. The appellant herein is the petitioner in the writ petition wherein they sought a mandamus to declare the action of respondents 2 and 3 (the GHMC and its Chief City Planner), in issuing proceedings dated 01.05.2017 and in granting permission to the 4th respondent to proceed with the construction, as illegal and arbitrary.

The appellant-writ petitioner trace their title to the assignees in whose favour the general power of attorney holder of the original owner had entered into an agreement. The 4th respondent, on the other hand, traces her title to the original owner himself, and would contend that, subsequent to the order of the High Court, a compromise was entered into. The inter-se civil disputes between the parties appears to have been carried right up to the Supreme Court. Pursuant to the sale deed executed in her favour, by the original owner, the 4th respondent commenced construction, and it appears from the order of the Learned Single Judge that one floor of the building has already been completed, and further construction of the building is in the finishing stages.

The appellant-writ petitioner filed the writ petition to restrain the 4th respondent from proceeding with the construction, contending that the GHMC ought not to have granted them permission to make construction. By the order under appeal, the Learned Single Judge, while refusing to interdict the construction being undertaken, made it clear that such construction would be subject to the result of the writ petition; and the 4th

respondent would not be entitled to claim any equities or the cost of construction, in the event the appellant-writ petitioner succeeds in the writ petition.

Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that the order under appeal was passed without either examining the appellant-writ petitioner's contention or that of the 4th respondent who had filed a counter-affidavit; and the order under appeal was passed even before the GHMC could file a counter-affidavit. On the other hand Sri C.V.Mohan Reddy, learned Senior Counsel appearing on behalf of the 4th respondent, would submit that it was on the insistence of the appellant-writ petitioner, that the interim order under appeal was passed; the Learned Single Judge had passed the order only on the insistence, of the Learned Senior Counsel for the appellant, that an interim order be passed; and having so insisted, it is not now open to the appellant-writ petitioner to turn around, and contend that the Learned Single Judge ought not to have passed the said order.

While it does appear that the order under appeal was passed only because the Learned Senior Counsel for the appellant had insisted on an interim order, the fact remains that the Learned Single Judge has not examined the rival contentions whether it is the appellant-writ petitioner who claim that their title has been finally decided by the Supreme Court or whether the 4th respondent is justified in her contention that a compromise was entered into after the order of this High Court, as a result of which she has title over the subject property. While these contentions could only have been examined after the GHMC, whose order is impugned in the Writ Petition, filed their counter-affidavit, it does appear that the appellant-writ petitioner's insistence had resulted in the order under appeal being passed.

We see no reason to accede to the request of Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the appellant-writ

petitioner, that the 4th respondent be restrained from proceeding with construction, as that would, apart from other reasons, also negate the submission of the learned Senior Counsel himself that no order could have been passed without hearing respondents 2 and 3. Suffice it, therefore, to set aside the order under appeal leaving grant of interim relief for the consideration of the Learned Single Judge in the WPMP, after respondents 2 and 3 file their counter-affidavits.

Sri Chatla Madhu, learned Standing Counsel for the GHMC, submits that a counter-affidavit would be filed in the writ petition within three weeks from today. It is open to the learned counsel for the appellant-writ petitioner to request the Learned Single Judge to take up the WPMP any day after three weeks. As and when the WPMP is taken up, it shall be decided on its merits without being influenced either by the order under appeal or the order now passed by us.

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)

29th December, 2017
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