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

Writ Appeal No.1910 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri S.Lakshminarayana Reddy, learned Standing Counsel appearing on behalf of the appellants (respondents 5 and 6 in the writ petition), Sri K.Pavan Kumar, learned counsel appearing on behalf of the 1st respondent-writ petitioner, and the learned Government Pleader for Revenue appearing on behalf of respondents 2 to 5. 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.49866 of 2017 in W.P.No.40192 of 2017 dated 29.11.2017 whereby the proceedings dated 23.11.2017, issued under Secton 636 of the HMC Act by the 2nd appellant herein i.e the Zonal Commissioner, Bheemunipatnam, was suspended as *mala fide*, contrary to law, and as being perverse; the appellants herein i.e the Commissioner and the Zonal Commissioner were directed to restore status quo ante within three weeks; and the Principal Secretary was directed to initiate disciplinary action against the conduct of the 2nd appellant herein forthwith.

This ad interim order was passed in a Writ Petition wherein the relief sought for was to declare the action of the Revenue Divisional Officer, Visakhapatnam and the Tahsildar, Bheemunipatnam Mandal, in not furnishing the valuation certificate of 75% on the basic value, for regularisation of the subject premises in favour of the 1st respondent-writ petitioner, pursuant to the order of the Tahsildar dated 06.08.2016, as illegal, arbitrary and in violation of principles of natural justice.

While the Municipal Commissioner and the Zonal Commissioner were arrayed as respondents 5 and 6 in the writ petition, no relief was sought against them nor was the notice issued under Section 636 of the

Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act") by the 2nd appellant herein on 23.11.2017, subjected to challenge in the Writ Petition filed on 27.11.2017. Even in the absence of any such relief having been sought, the Learned Single Judge has faulted the 2nd appellant herein (6th respondent in the writ petition) in demolishing a part of the structure, pursuant to the Section 636 notice, and has directed restoration of status quo ante within three weeks, besides directing initiation of disciplinary proceedings. This order was passed even without giving the appellants herein (respondents 5 and 6 in the writ petition) an opportunity of filing their counter-affidavit.

Sri K.Pavan Kumar, learned counsel appearing on behalf of the 1st respondent-writ petitioner, would submit that the Section 636 notice was issued on thursday evening, giving the 1st respondent-writ petitioner just a day's time to remove the unauthorised construction, and demolition of the subject structure commenced on Saturday morning without giving the 1st respondent-writ petitioner even breathing time to approach the Court. On the other hand Sri S. Lakshminarayana Reddy, Learned Standing Counsel for the GVMC would draw our attention to the prayer in W.P.No.38986 of 2017 filed by the 1st respondent-writ petitioner less than two weeks earlier on 16.11.2017, wherein she sought a mandamus to declare the action of the appellants herein, in trying to demolish the subject structures without following the due process of law, despite the order passed by the Tahsildar on 06.08.2016 with regards regularisation of the property, as illegal and arbitrary. It has not been disputed before us that no interim order was passed in W.P. No.38986 of 2017, and the said Writ Petition is still pending on the file of this Court.

Sri K.Pavan Kumar, learned counsel appearing on behalf of the 1st respondent-writ petitioner, would however contend that W.P.no.38986 of 2017 was filed prior to the Section 636 notice issued on 23.11.2017, and mere pendency of this Writ Petition did not preclude the 1st respondent-writ petitioner from filing a fresh writ petition questioning the Section 636 notice, since the said notice gave rise to a distinct cause of action.

The fact, however, remains that even in W.P.No.40192 of 2017, which was filed on 27.11.2017, the 1st respondent-writ petitioner has not chosen to question the validity of the Section 636 notice issued on 23.11.2017, and has merely questioned the inaction of the Tahsildar and the Revenue Divisional Officer in issuing a valuation certificate. Learned Government Pleader for Revenue would submit that a valuation certificate can only be furnished by the Sub-Registrar, and neither the Tahsildar nor the Revenue Divisional Officer can do so.

Viewed from any angle the order under appeal, directing the appellants herein (respondents 5 and 6 in the Writ Petition) to restore status-quo ante, and in directing the Principal Secretary to initiate disciplinary proceedings against the 2nd appellant herein (6th respondent in the writ petition), could not have been passed, much less without giving them an opportunity of filing their counter-affidavit.

The order under appeal is set aside and the Writ Appeal is disposed of accordingly. Suffice it to make it clear that the order now passed by us shall not disable the 1st respondent-writ petitioner from questioning the Section 636 notice in appropriate legal proceedings.

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)

15th December, 2017
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

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Date: 15.12.2017

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