

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL No.324 OF 2018

JUDGMENT: (per 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.37066 of 2017 in W.P. No.29777 of 2017 dated 04.09.2017 granting *status quo* with regards the subject property.

While we would, ordinarily, not have interfered with an ad-interim order, and the appellant would have been directed to file a counter-affidavit and seek vacation of the ad-interim order, Sri A. Sudershan Reddy, Learned Senior Counsel appearing on behalf of the appellant, would contend that the order under appeal was secured suppressing material and relevant facts. He would submit that the respondent-writ petitioner had filed W.P. No.22394 of 2017 which was disposed of, by order dated 11.07.2017, without notice to the appellant directing the GHMC to consider the petitioner's representation in accordance with law and communicate the decision to him; thereafter a reasoned order came to be passed by the Chief City Planner, GHMC on 08.08.2017 wherein reference is made to the suit filed in O.S. No.657 of 2017, the order of this Court in CRP. No.3917 of 2015 and CRP No.3225 of 2015 dated 13.04.2016, and to the earlier judgment of this Court in W.P. No.1214 and 14198 of 2001 dated 20.08.2002; the affidavit, filed in support of W.P.No.29777 of 2017, makes no reference to this order of the Chief City Planner, nor is there is any challenge to the reasons which weighed with the Chief City Planner in passing the order dated 08.08.2017; the mutation proceedings, which were

contested both by the appellant and the respondent-writ petitioner twice over, culminating in an order being passed by the Revenue Divisional Officer on 30.12.2017 etc, have also not been referred to in the affidavit filed in support of the Writ Petition; and the interim order was obtained suppressing relevant and material facts.

It is evident from a bare reading of the writ affidavit, that none of these, and other, orders which relate to the *inter-se* disputes, between the appellant and the respondent-writ petitioner, have even been referred to therein. It does also appear that there are Civil Suits i.e., O.S. No.1254 of 2017 filed by the appellant, O.S. No.1575 of 2017 filed by the respondent-writ petitioner, and O.S. No.657 of 2015 filed by the appellants vendor, which are all pending before the Civil Court. No reference is made in the Writ affidavit to any of these Civil Suits also.

While Sri A. Sudershan Reddy, Learned Senior Counsel appearing on behalf of the appellant, would submit that an order, obtained by suppressing relevant and material facts, necessitates being set aside in limini, Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the respondent-writ petitioners, would submit that these inter-se disputes, between the appellant and the respondent-writ petitioners, do not have a direct bearing on the relief sought for in the Writ Petition; and failure to state these facts in the writ affidavit is of no consequence. We must express our inability to agree.

The aforesaid orders disclose that the appellant and respondent-writ petitioners were involved in protracted legal battles before the revenue authorities, before the Civil Court and before this Court. The writ affidavit ought to have contained details of these disputes. While we see no reason to give a conclusive finding on the contention of Sri A. Sudershan Reddy, Learned Senior Counsel, that the interim order

under appeal was obtained by suppressing relevant and material facts, suffice it to observe that the order under appeal was passed in a Writ Petition wherein the earlier litigation, between the appellant and the respondent-writ petitioners, have not been referred to, and the Learned Single Judge was not made aware of all these disputes which the appellant and the respondent-writ petitioner were involved in, some of which are still pending before the Civil Court.

On the limited ground, that the order under appeal was passed without the Learned Single Judge being appraised of all relevant and material facts, the order under appeal is set aside. WPMP No.37066 of 2017 is restored to file and shall be heard and decided by the Learned Single Judge afresh, and in accordance with law, without being influenced by any observations made by us in this order. It is made clear that this order shall not disable the respondent-writ petitioner from filing an additional affidavit bringing all these, and other relevant and material, facts to the notice of the Learned Single Judge, and thereafter request him to take up WPMP No.37066 of 2017 for grant of interim relief.

The Writ Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 21.03.2018

MRKR

