

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

WRIT APPEAL No.466 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 order passed by the Learned Single Judge in W.P. No.40345 of 2017 dated 19.12.2017. The appellant herein is the 6th respondent in the Writ Petition. It is based on his complaint, alleging that the 1st respondent-writ petitioner had not left any set-backs and had constructed one more floor in deviation of the sanctioned plan, that action was initiated by the Gram-panchayat to demolish the unauthorised construction. Questioning the impugned proceedings, whereby he was informed that the subject building would be demolished, the respondent-writ petitioner invoked the jurisdiction of this Court and, by the order under appeal, the Learned Single Judge directed that the appeal preferred by the 1st respondent-writ petitioner be disposed of with utmost expedition and, till then, the impugned notice dated 24.01.2017 would remain stayed.

Sri K. Ramesh Babu, Learned Counsel for the appellant-6th respondent, would submit that Section 128(1) has no application as the construction, made by the respondent-writ petitioner, is contrary to the sanctioned plan; and the order under appeal was passed without giving the appellant an opportunity of being heard. On the other hand Sri C.R. Kalyan, Learned Counsel for the respondent-writ petitioner, would submit that an appeal would lie against such an order. Section 128(1)(a) provides for an appeal to the Gram-panchayat against any order of the Executive authority granting, refusing, suspending or

revoking a licence or permission. In the present case, the permission granted to the respondent-writ petitioner, to construct a building in accordance with the sanctioned plan, would, *prima facie*, not fall within the ambit of the words “*granting*”, “*refusing*”, “*suspending*”, or “*revoking*” of the permission, and an appeal would, therefore, not lie against the impugned proceedings.

Be that as it may, the impugned order came to be passed on 19.12.2017, three weeks after the Writ Petition was filed on 27.11.2017. Sri K. Ramesh Babu, Learned Counsel for the petitioner, would submit that, while notice was served on the appellant on 18.12.2017, the impugned order came to be passed on the very next day, even before he could enter appearance through Counsel. We are satisfied that the appellant was not afforded a reasonable opportunity of being heard. The order under appeal is set aside, and the Writ Petition is restored to file. The appellant and the Gram-panchayat shall file their respective counter-affidavits within two weeks from today. It is open to the respondent-writ petitioner to request the Learned Single Judge to take up the WPMP for hearing any day after two weeks.

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: 19.03.2018

MRKR

