

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

Writ Appeal No.517 OF 2018

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.No.5275 of 2018 dated 20.02.2018. The 1st respondent herein filed the writ petition seeking a mandamus to declare the action of the Panchayat Secretary, and the Manikonda Gram Panchayat, in frequently interfering with the finishing works being carried on by them on plot No.59 admeasuring 197.33 square yards in Survey No.31/a of Manikonda Jagir Village and Gram Panchayat, Rajendra Nagar Mandal, Ranga Reddy District, as arbitrary and in violation of Article 300-A of the Constitution of India. By way of interim relief, the 1st respondent-writ petitioner sought a direction to the Panchayat Secretary and the Gram Panchayat not to interfere with the finishing works undertaken by them on the subject plot, pending disposal of the writ petition.

In the order under appeal, the Learned Single Judge noted that the writ petition was heard on 19.02.2018 (i.e just a day before the date on which the order under appeal came to be passed); and the learned counsel for the 1st respondent-writ petitioner had contended, across the bar, that the Panchayat Secretary was demanding a bribe for facilitating completion of the interior and exterior of the house covered in the writ prayer; and completion of the interior and exterior ought not to have been treated as a building constructed from scratch.

After taking note of the objection of the learned Standing Counsel for the Gram Panchayat, that the allegations of bribe and corruption were not stated in the writ affidavit and the Court should not entertain such allegations, the Learned Single Judge noted the submission of the learned counsel for the 1st respondent-writ petitioner that he would be filing an affidavit in the Court as to what transpired between the Secretary and the Sarpanch on the illegal, motivated and unauthorized interference by respondent Nos.2 and 3 in the writ petition; the Learned counsel had also stated that his client had filed a complaint before the Anti Corruption Bureau (ACB) vide Inward No.74 of 2018; and he would pursue his remedy before the ACB court.

Recording the submission of the learned Standing Counsel that the Panchayat Secretary was prepared to examine the letter dated 18.01.2018, the Learned Single Judge directed respondents 2 and 3 in the writ petition not to illegally, and without reference to orders, interfere with the activity undertaken by the 1st respondent-writ petitioner; the activity, if any, undertaken by the 1st respondent-writ petitioner should conform to the plan already sanctioned, and be limited to the plan i.e by maintaining status-quo as regards the basic structure of the building; and the Court desired to know the outcome of the allegations of bribe against the Panchayat Secretary and the Sarpanch as well.

When we asked Sri E.Phani Kumar, learned counsel for the 1st respondent-writ petitioner, to show us any averment in the writ affidavit wherein allegations of bribe, having been demanded by the Panchayat Secretary, has been stated, Learned counsel would submit that the 1st respondent-writ petitioner has alleged, in the

writ affidavit, that the respondents were acting for extraneous consideration. We find considerable force in the submission of the Learned Standing Counsel for the appellant that, in the absence of specific allegations being made in the writ affidavit, of malice on the part of the Panchayat Secretary or his demanding a bribe, such submissions, made across the bar, ought not to have even been noted in the order under appeal. Allegations of corruption made across the bar, without even a reference in this regard in the writ affidavit, should not have been taken into consideration, as these contentions can only be entertained if such allegations are specifically pleaded, and if the person against whom malice is alleged is arrayed as a respondent eo-nominee (**State of Bihar vs. P.P.Sharma**¹). In the absence of any plea of malice, or of the appellant seeking a bribe, being made in the writ affidavit, and without the person against whom malice is alleged being arrayed as a respondent eo-nominee, reference to such allegations made across the bar, in the order under appeal, may not be justified.

With regards failure of the appellant, and the Gram Panchayat, to grant permission, Sri E.Phani Kumar, learned counsel for the 1st respondent-writ petitioner would fairly state that permission to raise construction was granted in the year 2006; and construction, pursuant to such permission, was required to be completed within one year. The justification for seeking the interim order is that a letter was submitted on 18.01.2018 seeking extension, of the permission granted earlier, to enable the 1st respondent-writ petitioner to complete the remaining construction. Sri E.Phani Kumar, learned counsel for the 1st

¹ AIR 1991 SC 1260

respondent-writ petitioner, drew our attention to certain photographs filed along with the writ appeal. One of the photographs show that, in a part of the building, the outer frame is alone completed, and even brick walls have not been raised thereupon. It is evident, therefore, that the contention that the entire construction is already completed, and only interiors remain to be undertaken, is not tenable.

Be that as it may, when we asked Sri E.Phani Kumar, learned counsel for the 1st respondent-writ petitioner, to show us the statutory provision which confers any right on the 1st respondent-writ petitioner to seek extension of the earlier permission which lapsed in the year 2007, more than a decade prior to when the respondent-writ petitioner had submitted their request for extension vide letter dated 18.01.2018, and though construction was required to be completed in terms of the permission granted earlier in 2006 within one year thereafter i.e., in the year 2007, learned counsel is not in a position to show any such provision. The order under appeal does not also refer to any provision which confers on the 1st respondent-writ petitioner the right to continue with construction based on a permission granted in 2006, which had lapsed one year thereafter in the year 2007. In any event, all these questions can be examined in the Writ Petition after the appellants herein are afforded an opportunity of filing their counter-affidavit.

The order under appeal must be, and is accordingly, set aside. We make it clear that we have not expressed any opinion on whether or not the Panchayat Secretary (appellant herein) had demanded a bribe and it is always open to the 1st respondent-writ

petitioner to array the appellant herein as a respondent eo-nominee in the writ petition, file an additional affidavit furnishing details of the allegations made in this regard, and seek an adjudication on merits by the Learned Single Judge.

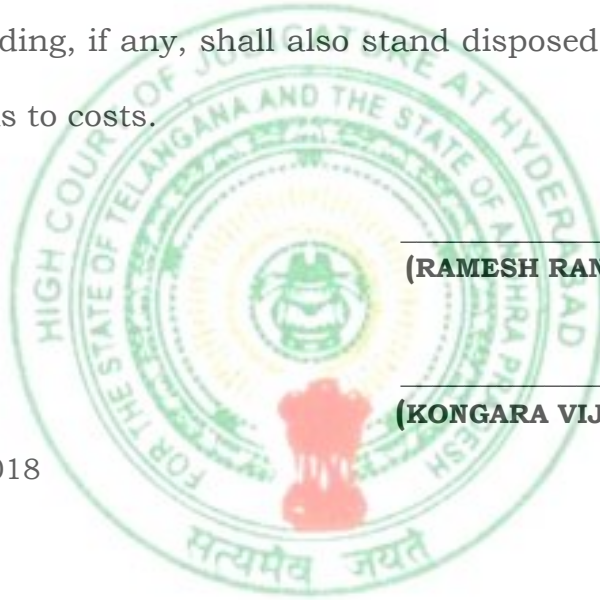
The appellant and the 3rd respondent shall file their counter-affidavit in the writ petition within three weeks from today. It is open to Sri E.Phani Kumar, learned counsel for the 1st respondent-writ petitioner, to request the Learned Single Judge to take up the WPMP for hearing any day after three weeks.

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)

(KONGARA VIJAYA LAKSHMI, J)

28th March, 2018
JSU



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



Writ Appeal No.517 OF 2018

Date: 28.03.2018

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