

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No. 852 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal is preferred by the 4th respondent in W.P. No. 20917 of 2017 aggrieved by the order passed by the learned Single Judge in W.P.M.P. No. 25710 of 2017 in W.P. No. 20917 of 2017 dated 13.3.2018.

This case has had a chequered history. The 4th respondent herein (petitioner in W.P. No. 20917 of 2017) filed W.P. No. 10837 of 2011 seeking a mandamus to declare the inaction on the part of the official respondents, regarding encroachment and constructions on the road to the South of the subject plots, as illegal and arbitrary. The appellant herein filed W.P. No. 4488 of 2013 seeking a mandamus to declare the action of the Panchayat Secretary in issuing notice dated 6.2.2013, directing her to stop construction, as arbitrary and illegal.

In its common order dated 18.7.2014, this Court took note of the fact that the 4th respondent herein had purchased two plots from the father of the appellant; a sale deed was executed by him, in the year 1981, in favour of the 4th respondent, which recorded the existence of a road both on the Western and the Southern sides of the subject plot; the appellant had filed a Suit for partition in the year 2005, and a decree was granted in the year 2008; while a registered sale deed was executed by the father of the appellant, in favour of the 4th respondent in the year 1981, the Suit for partition was filed by the appellant against her father fourteen years thereafter in the year 2005; the 4th respondent had contended that this suit was collusive in nature; pursuant thereto, the appellant's father had executed a gift deed in her favour gifting the road portion on the Southern side of the subject plot; and the appellant had, thereafter, commenced construction without even obtaining permission from the Gram Panchayat.

This Court also took note of the fact that a notice was issued on 6.6.2013 by the Gram Panchayat calling upon the appellant to show cause why the construction, already undertaken by her, should not be removed; questioning the said notice, she had filed W.P.No. 4488 of 2013; and, after filing the said Writ Petition, the appellant had made an application to the Gram Panchayat seeking permission to make construction. On the ground that the application made by the appellant was pending before the Gram Panchayat, this Court directed the Gram Panchayat to make available a copy of the said application, submitted by the appellant seeking permission to construct a building, to the 4th respondent, and granted her two weeks time to file her objections. The Gram Panchayat was, thereafter, directed to pass a reasoned order in accordance with law.

After the 4th respondent filed her objections, an order was passed by the Gram Panchayat resolving to grant permission to the appellant, to raise construction in the subject plot, on the ground that no inconvenience would be caused to the fourth respondent; the road had merged with the highway, and it had ended on the southern side of the plot of the 4th respondent.

Aggrieved thereby, the 4th respondent filed W.P. No. 20917 of 2017 seeking a mandamus to declare the proceedings of the Panchayat Secretary dated 10.12.2015, in granting building permission to the appellant contrary to the directions of this Court in W.P. Nos. 10837 of 2011 and 4488 of 2013 dated 18.7.2014, as arbitrary and illegal. The learned Single Judge, in the order under appeal, observed that the appellant appeared to have misled the Gram Panchayat in granting permission for construction in the area which was shown as a 'road' in the layout plan; prima facie, the permission granted in favour of the appellant was illegal; and the appellant could not be permitted to make construction by occupying the common area which had been left as a 'road'. The earlier interim order, granted on 29.6.2017, was made absolute.

Sri K. Srinivas, learned counsel for the appellant, would submit that the learned Single Judge had erred in granting stay of further construction, as the appellant had commenced construction only after obtaining building permission from the Gram Panchayat; the appellant is the owner of plot No.12-A and, on being granted permission to make construction, she was entitled to erect a building in accordance with the provisions of the Panchayat Raj Act; and, instead of keeping the Writ Petition pending on the file of this Court, this Court may consider directing a survey to be caused which would put an end to the litigation as it would disclose whether or not a road ever existed on two sides of the 4th respondent's plot, and whether the construction being made by the appellant is on the land ear-marked as a road both in the approved layout and in the sale deed executed in favour of the 4th respondent by the appellant's father.

On the other hand Sri J. Prabhakar, learned counsel for the 4th respondent-writ petitioner, would submit that the appellant, in collusion with her father, had played fraud on the 4th respondent; a registered sale deed was executed by the appellant's father in favour of the 4th respondent in the year 1981 which shows the existence of a road both on the Southern side and the Western side of the plot; the land, ear-marked as a road on the Southern side of the plot, was surreptitiously shown as a separate plot i.e., Plot No.12-A; a collusive partition suit was filed by the appellant against her father; the subject plot was not even the subject matter of the partition Suit; after the Suit was decreed, the appellant's father had executed a gift deed in her favour, as if the plot was subject matter of the decree; and, though elaborate and detailed objections were filed by the 4th respondent pursuant to the earlier order of this Court, the Gram Panchayat had failed to consider any of the objections, and had mechanically passed a resolution granting permission to the appellant to make construction.

A perusal of the registered sale deed, whereby the appellant's father had sold Plot No.11 in favour of the 4th respondent, shows that there is a

road both on the Southern and the Western side of the said plot. The contention of the 4th respondent is that Plot No.12-A is ear-marked as a 'road' on the Southern side of Plot No.11, sold to the 4th respondent by the appellant's father. This aspect does not appear to have been considered by the Gram Panchayat while passing a resolution according the appellant permission to construct a building. *Prima facie*, the submission of Sri J. Prabhakar, learned counsel for the 4th respondent, that the appellant had committed fraud on the 4th respondent cannot be readily brushed aside. In any event, these are again matters which are required to be examined in the Writ Petition which is still pending adjudication before the Learned Single Judge.

Interference, in an *intra-Court* appeal, is justified only if the order under appeal suffers from a patent illegality. The order under appeal, making the earlier interim order, of stay of further construction, absolute cannot be said to suffer from any such infirmity. With regards the appellant's submission that a survey should be caused, no such request appears to have been made before the learned Single Judge. Suffice it, while dismissing this appeal, to leave it open to the appellant to make an application before the learned Single Judge seeking a survey to be caused. We have no reason to doubt that, on such an application being made, the learned Single Judge would give such a request its due consideration, after affording the 4th respondent a reasonable opportunity of being heard in this regard.

The Writ Appeal is dismissed accordingly. Miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

5th July, 2018
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