

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

Writ Appeal No.671 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 order passed by the learned Single Judge in I.A. No. 3 of 2018 in W.P. No. 7823 of 2018 dated 20.4.2018.

The 1st respondent herein filed W.P. No. 7823 of 2018 seeking a Writ of Certiorari to call for the records in A.S. No. 4 of 2016 dated 14.2.2018 of the Principal District Judge, East Godavari District confirming the order dated 11.1.2016 in Case No. 1 of 2015 on the file of the Estates Officer, Rajahmundry Municipal Corporation, Rajahmundry and to set aside the same as illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India, besides being in violation of principles of natural justice and contrary to the provisions of the Hyderabad Municipal Corporation Act. By way of interim relief, they sought a direction from this Court to suspend the order passed by the Principal District Judge, East Godavari District at Rajamahendravaram in A.S. No. 4 of 2016 dated 14.2.2018, and the order passed by the Estates Officer, Rajahmundry Municipal Corporation, Rajahmundry in proceedings dated 11.1.2016, pending disposal of the Writ Petition. By interim order dated 12.3.2018, the learned Single Judge directed status-quo to be maintained by both sides in the meantime, and directed that the matter be posted to 19.3.2018.

The appellant herein filed a counter-affidavit on 20.3.2018 wherein they stated that the designated Officer went to the subject premises and affixed the order copy of the EP on the wall of the premises. He also conducted inventory in the presence of the Tahsildar and delivered possession of the subject premises to the Revenue Officer-I of

Rajamahendravaram Municipal Corporation, on 5.3.2018 itself, under acknowledgment. A copy of EP No. 1 of 2018 filed before the Estates Officer and the order passed by the authority were enclosed along with the counter-affidavit.

A petition to vacate the earlier interim order dated 12.3.2018 was also filed by the appellant herein on 16.4.2018. However, on I.A. No. 3 of 2018 being filed by the 1st respondent herein seeking a direction to the Municipal Corporation to forthwith remove the lock and key which is put on the main entrance gate of the guest house, and to allow the petitioner to conduct business in the rooms which are situated therein, the order under appeal came to be passed. In the said order, the learned Single Judge observed that, since the action of the Municipal Corporation of Rajahmundry ran contrary to the status-quo order passed in the Writ Petition on 12.3.2018 which had been extended on 21.3.2018, there shall be interim direction as prayed for.

The case of the appellant, as asserted in the counter-affidavit filed by them before the learned Single Judge, is that possession of the subject building was delivered on 5.3.2018, long before the order of status-quo was passed on 12.3.2018. Though the said counter-affidavit was there on record, the learned Single Judge did not examine this specific assertion of the appellant that they had taken possession of the subject building even before a status-quo order was passed on 12.3.2018. It is only if order of status-quo had been violated by the appellant, could the order under appeal have been passed. It was necessary, therefore, for the Learned Single Judge to record a finding whether the appellant's assertion, of having taken possession of the subject building on 5.3.2018 i.e a week before the interim order was passed on 12.3.2018, was true or false.

As the aforesaid contention, of the appellant, was not even examined before the order under appeal was passed, the order under appeal is set aside. I.A. No.3 of 2018 is restored to file. The learned

Single Judge shall examine the rival contentions, and thereafter pass orders in accordance with law in I.A. No.3 of 2018. Suffice it to make it clear that it is only the order passed in I.A. No. 3 of 2018 dated 20.4.2018 which has been set aside and the earlier order of status-quo, passed on 12.3.2018, shall continue to remain in force. Needless to state that continuance of the said interim order shall be subject to the result of the vacate stay petition filed before the Learned Single Judge by the appellant herein.

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)

1st May, 2018

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