

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

Writ Appeal No.681 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 interlocutory order passed by the Learned Single Judge in IA No.1 of 2018 in WP No.13073 of 2018 dated 24.04.2018.

The appellants herein are Respondent Nos.3 and 5 in the Writ Petition. Respondent Nos.1 to 6 herein filed W.P.No.13073 of 2018 seeking a writ of *mandamus* to declare the decision of the GHMC and its Chief City Planner, in granting fresh permission for construction of Blocks A,B,C & D, as originally proposed in revoked permit dated 15.04.2013 by issuing another permit dated 31.12.2015, as illegal and arbitrary; to declare failure of the GHMC, and its Chief City Planner (Respondent Nos.1 and 2 in the Writ Petition), in preventing illegal construction by the appellants, by showing the respondent-writ petitioners' land as access to their land without any right, as illegal and arbitrary; and for a consequential direction to the GHMC, and its Chief City Planner, to prevent further construction by the appellants in the subject land.

By way of interlocutory relief, a direction was sought to the appellants herein not to use any portion, of any of the petitioners' land in Sy.No.38, as access to Blocks A, B, C and D being constructed in Sy.Nos.38, 39P, 40, 41, 42, 48-53 of Kothaguda Village, Serilingamapally Mandal, Ranga Reddy District. By order

in IA No.1 of 2018 dated 24.04.2018, interim direction, as prayed for, was granted.

The dispute between the parties herein had earlier culminated in an order being passed by the Supreme Court in Civil Appeal No.513 of 2015 dated 16.01.2015. In its order, the Supreme Court noted the order of a Division Bench of this Court, in CMA No.646 of 2014 dated 22.08.2014, directing that, till the matter was adjudicated by the Trial Court, the parties should maintain *status quo* for ingress and egress to the schedule lands, from the land of plaintiffs; both parties shall abide by Clause 38 of the Development Agreement cum General Power of Attorney dated 22.01.2007; and that the defendant was entitled to use the plaintiffs' land for ingress and egress to the subject lands covered by the agreement, as agreed in terms of the agreement. The Supreme Court modified that portion of the aforesaid interim order passed by the Division Bench, while remanding the matter to the trial Court for hearing the interlocutory application, for grant of temporary injunction, afresh.

Elaborate submissions are made by Sri V. Ravinder Rao, learned Senior Counsel appearing on behalf of the respondents-writ petitioners, that the permission granted by the GHMC, for development of Blocks A to D, is illegal; it is this illegal permission which is subject to challenge in the Writ Petition; the order of the Division Bench, which required the respondents-writ petitioners to permit ingress and egress to the appellants to go to the schedule lands, was set aside by the Supreme Court; consequently, the appellants cannot claim, as a matter of right, that they had a right

to ingress and egress over the subject land; and the interim relief, which is sought, is in effect a direction to suspend the permission granted by the GHMC.

The question whether or not the appellants herein are making use of the land of the respondents-writ petitioners, in approaching the land where construction is being made, are matters for examination by the Trial Court in the pending suit. These disputed questions of fact would, ordinarily, not be subjected to examination in proceedings under Article 226 of the Constitution of India.

The interim order, sought for by the respondents-writ petitioners, was not to suspend the permission granted by the GHMC, but to restrain the appellants from having access to Blocks A to D, which is under construction. Disputes between two private parties in the private law realm would, ordinarily, not be examined by this Court in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India. A Writ of *mandamus* would issue only where a statutory violation is pointed out, and not otherwise. We are satisfied that the interim relief sought for, and granted, i.e to restrain the appellants from having access to the subject land, are not matters which this Court ought to have entertained in proceedings under Article 226 of the Constitution of India. The interim order under appeal is, therefore, set aside. Suffice it to make it clear that this order shall not disable the appellants from filing an application afresh seeking suspension of the permission granted by the GHMC, or to approach the Civil Court either in the pending suit or otherwise seeking the relief

sought for in IA No.1 of 2018, the order passed in which is now under appeal before us.

Subject to the aforesaid observations, the Writ Appeal is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Appeal shall stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

Date: 30.04.2018
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Date: 30.04.2018

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