

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

Writ Appeal No.726 of 2018 & Writ Petition No.1967 of 2018

COMMON JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Respondents 7 to 9 in W.P.No.1967 of 2018 have preferred this appeal against the interlocutory order passed in I.A.No.2 of 2018 in W.P.No.1967 of 2018 dated 18.04.2018. The 1st respondent in the writ appeal filed W.P.No.1967 of 2018 seeking a writ of mandamus to declare the action of the Secretary to the Government, Municipal Administration and Urban Development Department, in issuing proceedings dated 27.12.2017, as arbitrary, illegal, contrary to law, violative of principles of natural justice and violative of Articles 14 and 21 of the Constitution of India. A consequential direction was sought to set aside the impugned memo.

By way of I.A.No.2 of 2018, the 1st respondent-writ petitioner sought a direction to the Commissioner, Greater Hyderabad Municipal Corporation (GHMC) not to pass any order on the application for regularisation, made by respondents 5 to 9 in the writ petition, in respect of the land situated in Survey Nos.51 to 53 (part) of Gachibowli Village, Serilingampally Mandal, Ranga Reddy District.

Facts, to the limited extent necessary, are that a notice was issued by the GHMC under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955 to demolish the unauthorised construction raised by the appellants herein. The appellants filed an application seeking regularisation of the unauthorised construction. The Commissioner, GHMC, by his rejection notice

dated 31.05.2013, informed the appellants that their application for regularisation was examined with reference to the regularisation scheme; and, in view of the *status quo* order in force granted by a Division Bench of this Court in CRP.No.6708 of 2003 dated 25.02.2013 between the parties, regularisation of the building, sought for by the appellants, was rejected as required under Rule 9(j) of the Scheme issued in G.O.Ms.No.901 dated 31.12.2017 as the site was under legal dispute/litigation regarding ownership.

Aggrieved thereby, the appellants herein preferred an appeal, in terms of Para (11) of the Scheme, to the Committee constituted by the Government. The State Government, by Memo No.6319/Plg.II(1)/2016 dated 27.12.2017, informed the appellants that the Appellate Committee, constituted in G.O.Ms.No.141 dated 17.05.2016, had examined the appeal filed by the respondent-writ petitioner against the rejection order passed by the GHMC, and had submitted their recommendations to the Government; after careful examination of the matter, it was observed that, earlier, the GHMC had rejected the BPS application on the ground of pending title dispute over the property; and subsequently the Joint Collector, by his letter dated 24.09.2016, had decided the title in favour of the appellants. The Commissioner, GHMC was requested to re-examine the BPS application of the appellants as per the BPS rules in force, keeping in view the Joint Collector's letter dated 24.09.2016. Aggrieved thereby, the 1st respondent-writ petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India. On the order under appeal being passed in

the said Writ Petition the appellants herein are in appeal, before us, aggrieved thereby.

In the order under appeal, the Learned Single Judge noted that there was a litigation pending between the appellants and the 1st respondent-writ petitioner before this Court, in CRP.Nos.5279 of 2016, 5635 of 2016 and 998 of 2017 and batch, relating to the subject land; and when such litigation was pending in respect of the subject land, in view of Clause 7(j) of G.O.Ms.No.901 dated 31.12.2007 and Clause 9(i) of G.O.Ms.No.152 dated 02.11.2005, the application for regularisation could not be considered.

The Learned Single Judge noted the submission, urged on behalf of the appellants, that, since the respondent-writ petitioner did not have a specific order in his favour, no relief could be granted to him in the writ petition. This contention was rejected by the Learned Single Judge holding that the 1st respondent-writ petitioner was a party in C.R.P.No.5279 of 2010 in which there was a *status quo* order in his favour; the appellants were parties in C.R.P.No.5235 of 2016, though there was no interim order passed therein; and the contention that the clauses in the G.Os would not apply, unless there is a specific order in the litigation, could not be accepted, since the language of the GOs was in respect of sites which were under litigation, and required the GHMC or the State Government not to proceed to consider the application for regularisation of such buildings, where sites were under litigation.

Clause 9(i) of G.O.Ms.No.152 dated 02.11.2015 requires the GHMC not to consider regularisation of unauthorised construction in cases where sites are under legal litigation/disputes regarding ownership of the site/building. The fact that there is a pending

litigation, between the parties, is not in dispute. The question which, however, necessitates consideration is whether the interim order under appeal, which has the effect of granting the main relief sought for in the writ petition, could have been passed.

We are saved the trouble of examining this question, in as much as Sri D.Jagan Mohan Reddy, learned counsel for the 1st respondent-writ petitioner, would submit that the appellate order, which was approved by the Government in its Memo dated 27.12.2017, was passed without the respondent-writ petitioner being given an opportunity of being heard. The Memo dated 27.12.2017 makes no reference to the respondent-writ petitioner having been heard on the issue, nor does it reflect consideration of the objections, if any, raised by him. The fact that the order passed by the Appellate Committee, which was later approved by the State Government in its Memo dated 27.12.2017, was without giving the respondent-writ petitioner an opportunity of being heard, has not been disputed before us by Sri B.Vijaysen Reddy, learned counsel for the appellants.

If that be so, the order passed by the Appellate Committee, in an appeal preferred against the rejection notice issued by the Commissioner, GHMC in his proceedings dated 31.05.2013, must be held to suffer from violation of principles of natural justice, as the order passed by the Commissioner, GHMC, on an application made by the 1st respondent-writ petitioner, was set aside, without the 1st respondent-writ petitioner being given an opportunity of being heard.

While fairly stating that the appeal may be required to be heard afresh by the Appellate Committee, Sri B.Vijaysen Reddy,

learned counsel for the appellants, would draw our attention to the order passed by the Learned Single Judge in W.P.Nos.25406 and 25407 of 2013 dated 07.12.2015 whereby the Committee, constituted to hear the appeal, was directed to dispose of the appeal within a period of two weeks from the date of receipt of a copy of the order after notice to the petitioners therein; and the further action, for demolition of the building of the petitioners therein, was made to depend upon the result of the appeals.

While setting aside the Memo issued by the Government of Telangana dated 27.12.2017, approving the recommendation of the Appellate Committee constituted under G.O.Ms.No.141 dated 17.05.2016, we consider it appropriate to direct that the Appellate Committee, constituted in terms of G.O.Ms.No.141 dated 17.05.2016, shall hear the appeal afresh after putting both the appellants and 1st respondent-writ petitioner on notice and after giving them a reasonable opportunity of being heard including, if need be, to file their written submissions. The Appellate Committee shall pass a reasoned order after taking into consideration the rival submissions made on behalf of the appellants and the 1st respondent-writ petitioner. The entire exercise of deciding the appeal afresh, for the Committee to make its recommendation to the Government of Telangana, and for the State Government to pass an order afresh and in accordance with law, shall be completed within a period of two months from the date of receipt of a copy of this order. Till orders are passed afresh, as indicated hereinabove, the Section 636 notice issued by the GHMC shall not be given effect to. It is made clear that, after

orders are passed by the Appellate Committee, it is open to the GHMC to take necessary action in accordance with law.

Sri D.Jagan Mohan Reddy, learned counsel for the 1st respondent-writ petitioner, would fairly state that, in the light of the order now passed by us, the cause in the Writ Petition no longer survives.

Both the Writ Appeal and the Writ Petition are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

05th June, 2018

Note: Issue C.C in one week.

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Date: 05.06.2018

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