

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

Writ Appeal No.780 of 2018 & Writ Petition No.12816 of 2018

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

This appeal is preferred, under Clause 15 of the Letters Patent, against the order passed by the Learned Single Judge in I.A.No.1 of 2018 in W.P.No.12816 of 2018 dated 24.04.2018. Respondents 1 to 4 herein filed W.P.No.12816 of 2018 seeking a writ of mandamus to declare the action of the Greater Visakhapatnam Municipal Corporation (GVMC), and its Zonal Commissioner, in trying to interfere with their peaceful possession and enjoyment of their commercial establishment at Visakhapatnam, during the pendency of the application seeking confirmation whether the said property falls within CRZ-II or CRZ-III by the 3rd respondent therein and in violation of the injunction orders, as being illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India. By way of **interim** relief, they sought a direction to the respondents therein not to interfere with their peaceful possession pending disposal of the writ petition.

On the ground that the GVMC had itself, in its endorsement dated 05.09.2017, informed the respondents-writ petitioners that they should approach the Visakhapatnam Urban Development Authority ("VUDA" for short) for confirmation whether their land fell within CRZ-II or CRZ-III, the respondents-writ petitioners claim to have made an application to VUDA on 10.10.2017, and because no reply was forthcoming to their representation, this Court directed the respondents in the writ petition (including the appellants herein) not to interfere with the respondent-writ petitioner's peaceful possession and enjoyment of the subject property till VUDA disposed of their application dated 10.10.2017.

Sri S.Lakshminarayana Reddy, learned Standing Counsel for the appellants, would submit that, irrespective of whether the subject property falls within CRZ-I or CRZ-II or CRZ-III, prior permission is required to be obtained from the Coastal Zonal Management Authority in terms of the Coastal Regulation Zone (CRZ) notification dated 06.01.2011; admittedly, the respondents-writ petitioners have not obtained clearance, from the Coastal Zonal Management Authority, which is a pre-condition even for examining their application for grant of permission for construction; be it CRZ-II or CRZ-III, prior clearance of the Coastal Zonal Management Authority is a pre-requisite; the application made by the respondents-writ petitioners to VUDA is only a ruse to drag on proceedings, and to avoid action being taken by the GVMC against the illegal and unauthorised construction made by the respondent-writ petitioner; and the order under appeal necessitates being set aside.

On the other hand Sri G.Venkata Reddy, learned counsel for the respondents-writ petitioners, would submit that the construction made by the respondents-writ petitioners was prior to February, 1991; the CRZ Regulations, notified in S.O.114(E) dated 19.02.1991, exempts buildings constructed before the date of the notification, i.e 19.02.1991, from the requirement of obtaining prior clearance from the Central Zonal Management Authority if the subject property falls within CRZ-II; it is only if the land, on which the construction was raised, falls within CRZ-III is prior clearance of the Central Zonal Management Authority required to be obtained; as it is not clear whether the subject land falls within CRZ-II or CRZ-III, the appellants herein had themselves asked the respondents-writ petitioners to seek clarification from VUDA; it is in this context that the respondents-writ petitioners had approached VUDA seeking a clarification as to whether the subject land falls within CRZ-II

or CRZ-III; and the Learned Single Judge was therefore justified in passing the interim order under appeal.

Since Sri S. Lakshminarayana Reddy, learned Standing Counsel, disputed the contention, urged on behalf of the respondent-writ petitioner, that, even under the 1991 CRZ Regulations, no exemption is granted for obtaining prior clearance from the Coastal Zonal Management authorities, for buildings falling within CRZ-II even if they were constructed before 1991, we asked Sri G.Venkata Reddy, learned counsel for the respondents-writ petitioners, to show us the relevant Regulation which exempts buildings, constructed before February, 1991, from the requirement of obtaining prior clearance from the Central Zonal Management Authority. While expressing his inability to show the said Regulation, as they were not readily available with him, Sri G. Venkat Reddy, Learned counsel, would submit that the respondents-writ petitioners would, if given an opportunity, submit all necessary information before the GVMC itself; and it would suffice if the GVMC is directed to consider and pass orders on the respondents-writ petitioners' representation, in accordance with law, before taking any further action against them.

While expressing his reservations to such an order being passed, Sri S.Lakshminarayana Reddy, Learned Standing Counsel for the GVMC, would submit that this is yet another effort on the part of the respondents-writ petitioners to needlessly drag on proceedings only with a view to avoid action being taken against them; and a speaking order was passed by the appellants on 26.04.2017 itself holding that the subject land falls within CRZ-III. While this submission of the learned Standing Counsel cannot be said to without merit, the fact remains that it is the Commissioner, GVMC who had, after having passed the order dated 26.04.2017, issued the endorsement dated 05.09.2017 directing

the respondents-writ petitioners to approach VUDA for confirmation as to whether their land falls within CRZ-II or CRZ-III. Having issued the endorsement dated 05.09.2017, it is not now open to the Commissioner, GVMC to contend that the subject building should be demolished even without determining (i) whether or not the subject land falls within CRZ-II or CRZ-III; (ii) if it falls within CRZ-II, whether buildings, constructed prior to February, 1991, are exempt from the requirement of obtaining prior clearance from the coastal zonal management authorities; and (3) whether the respondents-writ petitioners had, in fact, raised these construction before February, 1991 as claimed by them.

As the very object of prescription of the Coastal Zonal Regulations is to prevent construction near the Coast, it is necessary that illegal and unauthorised constructions, if any, be removed in accordance with law. Since the respondents-writ petitioners seek an opportunity to put forth their submissions to the appellants, we consider it appropriate to give them an opportunity to do so within 10 days from today. By their representation, and the documents, if any, annexed thereto, the respondents-writ petitioners should clearly establish that the construction raised by them is before 19.02.1991 when the CRZ Regulations were notified in SO.114(E) dated 19.02.1991; and that the subject construction falls within CRZ-II (for, if it falls within CRZ-III, even according to the respondents-writ petitioners themselves, the construction made before 19.02.1991 also requires prior clearance). The respondents-writ petitioners shall also specify, in their representation, the relevant Regulation, in the 1991 CRZ Regulations, which exempts buildings constructed before 19.02.1991 from the requirement of obtaining clearance from the Coastal Zonal Management authority.

The GVMC shall, within 10 days from the date of receipt of the respondents-writ petitioners' representation, pass a reasoned order

considering all the contentions raised in the representation, communicate the said order to the respondent-writ petitioner, and thereafter take action in accordance with law. Needless to state that, in case the respondents-writ petitioners are not able to show that they do not require prior clearance from the Costal Zonal Management Authority, it is open to the GVMC to take action, against the construction raised by them, in accordance with law since, admittedly, no permission from the Costal Zonal Management Authority has been obtained by the respondents-writ petitioners. It is made clear that, if the respondent-writ petitioner fails to submit their representation to the Commissioner, GVMC within ten days from today, it is open to the appellants to proceed and take action in accordance with law, without awaiting receipt of the respondent-writ petitioner's representation.

Both Sri G.Venkata Reddy, learned counsel for the respondents-writ petitioners, and Sri S.Lakshminarayana Reddy, learned Standing Counsel for the GVMC, agree that, in the light of the order now passed by this Court, the cause in the writ petition does not survive.

Consequently, the order under appeal is set aside and both the Writ Appeal and the Writ Petition are disposed of in terms of the directions issued hereinabove. 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)

08th June, 2018
Note: Issue C.C by 11.06.2018.
 JSU

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Date: 08.06.2018

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