

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.783 of 2018

And

Writ Petition No. 12223 of 2018

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

Heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant, and Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioners, and, with their consent, both the Writ Appeal and the Writ Petition are disposed of at the stage of admission.

The appellant herein is the 3rd respondent in W.P. No. 12223 of 2018. Respondents 3 to 5 herein filed the said Writ Petition seeking a mandamus to declare the order passed by the Commissioner, Nirmal Municipality in proceedings dated 4.4.2018, keeping in abeyance the building permission granted in respect of the respondent-writ petitioners' property vide proceedings dated 21.3.2018 of an extent of 308.33 square yards in old Survey No. 1337, 1338 and 1109 situated opposite to TSRTC bus depot, Bolwada, Nirmal, as arbitrary, illegal, unconstitutional and beyond the powers conferred under the Telangana State Municipalities Act, 1965. By way of interim relief, the respondent-writ petitioners sought suspension of the operation of the order of the Commissioner, Nirmal Municipality dated 4.4.2018.

In the order under appeal, the learned Single Judge observed that, *prima facie*, invocation of Section 344 of the Telangana Municipalities Act, 1965 by the Commissioner, to keep in abeyance the building permission granted to the respondent-writ petitioners on 21.3.2018, was unsustainable since the Commissioner was not empowered to decide any dispute of title, even if there was any civil dispute between the respondent-writ petitioners and the appellant-3rd respondent, as no such power is conferred on him under the provisions of the said Act.

Consequently, interim suspension, as prayed for, was granted. As a result of the order under appeal, the order passed by the Commissioner, Nirmal Municipality on 4.4.2018 remains suspended; and as a result, and in terms of the permission granted earlier on 21.3.2018, respondent-writ petitioners were, in effect, permitted to make construction in accordance with such permission.

The proceedings, impugned in the Writ Petition dated 4.4.2018, is a notice issued by the Commissioner, Nirmal Municipality to the respondent-writ petitioners calling upon them to furnish valid registered documentary evidence along with link documents; and in directing that, till finalisation of the dispute, the building permission, so granted, was to be kept in abeyance under Section 344(6) of the Telangana Municipalities Act, 1965 (hereinafter referred to as “the Act”). The respondent-writ petitioners were directed not to take up any work until and unless the dispute was settled. They were informed that, if any such work being undertaken was noticed, action would be taken as per the laws in force. The order passed by the Commissioner, Nirmal Municipality dated 4.4.2018, keeping the earlier building permission in abeyance, has been suspended by the order under appeal.

Sri D. Prakash Reddy, learned Senior Counsel appearing for the respondent-writ petitioners, would draw our attention to certain photographs, filed along with the counter-affidavit, to submit that, pursuant to the order of the learned Single Judge, respondents 3 to 5 have constructed a compound wall, and have raised a gate, on the subject land.

Sri Ravishankar Jandhyala, Learned Counsel for the appellant (3rd respondent in the Writ Petition), would draw our attention to the letter dated 5.7.2014, to submit that it was respondents 3 to 5 herein who had complained to the Commissioner that the appellant-3rd respondent was seeking to start construction of sheds on the 33 feet road encroaching on the same by blocking the road, and their access to the road; and it is

evident from this letter itself that the subject land is a road. On the other hand Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioners, would submit that the appellant has ready access to the main road, as their building is abutting the main road itself; the respondent-writ petitioners earlier lacked access to their plots and had, in this context, sought to restrain the appellant from making any construction, as it would affect their passage to the plot; thereafter, in 2016, they purchased the subject land; as a result they now have access to the main road; and, any construction raised by them on the subject land purchased by them in 2016, would not affect the appellant since he already has access to the main road. Learned Senior Counsel would also draw our attention to the letter dated 31.03.2018 addressed by the appellant to the Commissioner, Nirmal Municipality, wherein he stated that the subject land was exclusively for their access, to submit that, in the light of their letter dated 31.3.2018, it is evident that it is not even the appellant's case that the subject land is a public road, in which case alone would the respondent-writ petitioners be disabled from raising any construction thereupon.

While the Commissioner, Nirmal Municipality may not be justified in adjudicating disputed question of title after calling for documents of title, he has, undoubtedly, the power to ensure that no constructions are raised on a public street. Sri D. Prakash Reddy, learned Senior Counsel, would draw our attention to several provisions of the Act to submit that a detailed procedure is contemplated under the Act, and it is only after complying with such provisions, would a street become a public street; it is only after it is declared a public street, would the general public have free access thereto; and it is not even the appellant's case that the disputed land is a public street. On the other hand Sri Ravi Shankar Jandhyala, learned counsel appearing on behalf of the appellant, would refer to certain complaints given by the local Corporator, to contend that

free access to the general public is denied as a result of the construction now made by respondents 3 to 5 on the subject land.

If the subject land is held to be a public street, the Commissioner, Nirmal Municipality would then be entitled to prohibit any construction thereupon. It would be wholly inappropriate for us, in proceedings under Article 226 of the Constitution of India, to undertake the exercise of determining whether or not the disputed land is a street; and, if so, whether it is a private or a public street. We consider it appropriate, therefore, to set aside the order under appeal, and the order of the Commissioner dated 4.4.2018, and pass the following order in its place.

The Commissioner, Nirmal Municipality shall, in case he is satisfied that the subject plot is a public street, put respondents 3 to 5 on notice within one week from the date of receipt of a copy of this order, furnishing details on the basis of which he believes that it is a public street. On receipt of such a notice, respondents 3 to 5 herein shall submit their objections thereto, raising all such contentions as are available to them in law, within two weeks thereafter. The Commissioner shall also hear the appellant in this regard. Within two weeks from the date on which respondents 3 to 5 submit their objections in reply to the notice issued by him, the Commissioner, Nirmal Municipality shall pass orders thereupon and communicate his decision both to the appellant and to respondents 3 to 5. Till then the respondent-writ petitioners shall not make any further construction. If it is held that the subject land is a public street, the Commissioner shall take action for removal of encroachments, or the construction made, thereupon only after putting respondents 3 to 5 on notice of such encroachments, and after giving them an opportunity of being heard. The notice, calling upon the respondent-writ petitioner to remove the encroachments on the public road, and action pursuant thereto, shall commence two weeks after the date on which the earlier order is communicated to them.

If, on the other hand, the subject site is held by the Commissioner, not to be a public street, then any grievance which the appellant may have, regarding violation of their easementary rights over the subject land, can only be agitated by them before a competent Civil Court, and not before the Commissioner, Nirmal Municipality. If the Commissioner holds that the subject land is not a public street, it would thereafter be open to respondents 3 to 5 to make further construction, in terms of the permission granted earlier on 21.03.2018, subject, of course, to any order which the Civil Court may pass on its jurisdiction being invoked by the appellant herein.

The order under appeal, and the proceedings of the Commissioner dated 4.4.2018, are set aside. The Writ Petition and the Writ Appeal are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

20th June, 2018

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Date: 20.6.2018

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