

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

WRIT APPEAL No.821 of 2018

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri S.Lakshminarayana Reddy, learned Standing Counsel for the Greater Visakhapatnam Municipal Corporation (GVMC), and Sri Ravi Cheemalapati, learned Counsel appearing on behalf of Sri T.V.S.Prabhakar Rao, learned Counsel for the respondents – writ petitioners, and, with their consent, the Writ Appeal is disposed of at the stage of admission.

This Writ Appeal is preferred against the *ad interim* order passed by the learned Single Judge, in I.A.No.1 of 2018 in W.P.No.7181 of 2018 dated 02.05.2018, wherein they sought an interim order directing the appellant - Corporation not to alter the nature of the said Green Park by making any construction, and to follow the directions of this Court in W.P.No.4598 of 2000 dated 21.06.2001 pending disposal of W.P.No.7181 of 2018. The learned Single Judge, having regard to the order passed in W.P.No.4598 of 2000 dated 21.06.2001 and for reasons alike, granted interim directions as prayed for. Aggrieved thereby, the present Writ Appeal is filed.

Sri S.Lakshminarayana Reddy, learned Standing Counsel for the Greater Visakhapatnam Municipal Corporation (GVMC), would submit that this order was not passed on the day on which the writ petition first came up for admission; the learned Single Judge granted the appellant herein time to file their counter-affidavit; the appellant had, in fact, filed a counter affidavit on 30.04.2018; an application was filed by the respondents – writ petitioners on

01.05.2018 to implead respondent Nos.3 and 4 who were undertaking construction of subsidized houses, under the Affordable Housing in Partnership Scheme which is a component of Pradhanamantri Awas Yojana Housing scheme; the said implead application came up before the learned Single Judge on 02.05.2018; and, while ordering the application to implead the proposed respondent Nos.3 and 4 as respondents in the Writ Petition, the learned Single Judge granted interim direction as prayed for without examining the appellant's submissions and contentions in their counter-affidavit.

It is not in dispute that a counter affidavit was served on the respondent-writ petitioner, and filed in Court, on 30.04.2018 two days before the interim order under appeal came to be passed on 02.05.2018; the respondents – writ petitioners have not filed any affidavit in reply to the counter affidavit filed by appellant – Corporation; and, consequently, the averments in the counter affidavit stand unrebutted as on date. The learned Single Judge ought to have referred to the contents of the counter affidavit, and dealt with the contentions raised therein, before passing an interim order. In paragraph 6 of the counter affidavit, the appellant-GVMC has asserted that the proposed site was neither a green belt nor a park as per the approved master plan of Visakhapatnam Municipal Corporation; the master plan was a statutory document approved vide G.O.Ms.No.345 dated 30.06.2006; and, as per the said approved master plan, the subject site falls within residential land.

The dispute, in this Writ Petition, relates to whether the appellant – Corporation commenced construction on the land which was the subject matter of an order, of a Division Bench of

this Court, in W.P.No.4598 of 2000 dated 21.06.2001. In W.P.No.4598 of 2000 dated 21.06.2001, a mandamus was sought to declare the action of appellant - Greater Visakhapatnam Municipal Corporation in converting 'Green Park', situated adjacent to Ramakrishna Street, Old City, Visakhapatnam, into a garbage dumping yard as being illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India, apart from being violative of the notification dated 27.09.1999 issued by the Ministry of Environment and Forests. A consequential direction was sought to the appellant - Corporation to forthwith shift the garbage dumping yard from the afore-mentioned place to an area outside Visakhapatnam City, and to restore the said area to its earlier state by taking necessary steps such as plantation and beautification of the area. The Division Bench passed an elaborate order, and directed the appellant - Corporation not to dump garbage in the park in question or in any other park; and restore the lost glory of the Green Park, and maintain it properly. The A.P. Pollution Control Board was directed to monitor maintenance of the Green Park on a regular basis; if it came to its notice that the Greater Visakhapatnam Municipal Corporation was not maintaining the park, and was violating the provisions of the Municipal Wastes (Management & Handling) Rules, 1999, it should initiate criminal proceedings against the Corporation; and it should issue a circular to all municipal bodies in the State directing compliance of the aforesaid rules. A copy of the order was directed to be circulated to all Corporations/Municipalities for ensuring compliance of the directions.

Having taken note of the fact that the 'Green Park' was being used as a dumping yard, the Division Bench directed the appellant – Corporation not to use the said area as a dumping yard, restore its glory, and maintain it properly. Though it claims to have stopped using the areas as a dumping yard, the appellant – Corporation does not appear to have restored the park in accordance with the directions of the Division Bench. Sri S.Lakshminarayana Reddy, learned Standing Counsel for the Greater Visakhapatnam Municipal Corporation (GVMC), would submit that, while the Corporation is no longer dumping garbage in the open area, the said area remains open, and has not yet been developed as a park, it is vacant as on date, and that is not in issue in the present proceedings.

The question which necessitates examination is whether or not construction of subsidized houses by respondent Nos.5 and 6 herein, on behalf of the appellant – Corporation, is on the very same land covered by the order of the Division Bench in W.P.No.4598 of 2000 dated 21.06.2001.

Sri Ravi Cheemalapati, learned Counsel for the respondents – writ petitioners, would assert that the construction being made is on the very same land which was the subject matter of the order of the Division Bench in W.P.No.4598 of 2000 dated 21.06.2001. On the other hand Sri S.Lakshminarayana Reddy, learned Standing Counsel for the Greater Visakhapatnam Municipal Corporation (GVMC), would submit that though the land, under consideration before the Division Bench in W.P.No.4598 of 2000, has not been converted into a park, it is even, as on date, open land; and the construction being made, to provide subsidized houses, is not on

this land, but on a different extent of land opposite the colony of the respondent – writ petitioners divided by a 77 ft. road.

Sri S.Lakshminarayana Reddy, learned Standing Counsel for the appellant-Greater Visakhapatnam Municipal Corporation, would also draw our attention to a map, as well as a google map, in support of his submission that the land on which the subsidized houses are being constructed is different from the land which was under consideration in W.P. No.4598 of 2000. If what is shown in the maps are true, then the construction being made, to provide subsidized houses, is not on the land which was the subject matter of W.P.No.4598 of 2000. It would, however, be wholly inappropriate for us to record a conclusive finding on this aspect, since the writ petition is still pending before the learned Single Judge, and the rival contentions have not yet been examined on merits.

We consider it appropriate, therefore, to set aside the order under appeal, and pass the following order which shall be the interim order in W.P.No.7181 of 2018. While the appellant – Corporation may permit subsidized houses to be constructed by respondent Nos.5 and 6, in terms of the scheme, no construction shall be made on the land which is the subject matter of the order of the Division Bench in W.P.No.4598 of 2000 dated 21.06.2001, which was hitherto being used as a dumping yard, though it was known as ‘Green Park. The admitted failure of the appellant – Corporation, to develop the “Green Park” site into a park, and in keeping it open, appears to be in violation of the order passed by the Division bench of this Court in W.P.No.4598 of 2000 dated 21.06.2001. As to what action should be taken against the appellant – Corporation, for their failure to comply with the order

of the Division Bench in W.P. No.4598 of 2000 dated 21.06.2001, is also left open to be examined in the Writ Petition. Pending further orders, while the appellant – Corporation may proceed with construction of the subsidized houses if it is on any other land, they shall not make any construction on the land which is the subject matter of the order of the Division Bench in W.P.No.4598 of 2000 dated 21.06.2001.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, ACJ

J.UMA DEVI,J

Date: 21.06.2018
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