

HON'BLE THE CHIEF JUSTICE
SRI THOTTA THIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1680 OF 2018

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Peri Prabhakar for appellant, Mr.K.Sinivas for respondents 1 and 2 and the learned Standing Counsel for GHMC.

The 5th respondent in the writ petition is the appellant. Respondent Nos.1 and 2 herein filed W.P.No.41295 of 2018 praying for declaration that the action of Assistant City Planner/4th respondent in trying to interfere with the construction work in progress at H.No.7-4-400/1/H/3/A, Plot No.1 (southern portion) and Plot No.2 (northern portion), total admeasuring 168.5 sq. yards or 140.88 sq. meters in Sy.No.65 situated at Ferozguda Village, Balanagar Mandal, Medchal, Malkajgiri District, without following procedure as illegal and contrary to the GHMC Act.

The learned Single Judge, admittedly, without notice to the appellant herein, by referring to the stand taken by the Standing Counsel for GHMC, disposed of the writ petition directing respondents 1 to 4 therein not to interfere with the construction activity of petitioners except by following the procedure established by law.

The order under appeal appears to be innocuous and writ prayer was made as if there has been cause of action for consideration against respondents 1 to 4 therein.

It is not in dispute that the appellant and respondents 1 and 2 are parties in O.S.No.1274 of 2018 in the Court of the IX Additional Senior Civil Judge, L.B.Nagar, Ranga Reddy District.

Respondents 1 and 2 filed the said suit for perpetual injunction and are unsuccessful in getting temporary injunction in I.A.No.897 of 2018. Respondent Nos.1 and 2 having already availed the remedy of suit now ought not to have devised separate cause of action against respondents 3 to 6 in the appeal and filed the instant writ petition.

The order under appeal firstly is passed without notice to rival claimant. Secondly, the civil suit is pending between the parties. The direction impugned in the writ appeal if allowed to remain in operation, the same results in a contradictory situation and ought to be avoided.

The writ appeal is allowed and the impugned order is set aside by preserving all contentions on possession, identity etc., for consideration by the Civil Court in O.S.No.1274 of 2018. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

20th December, 2018
Prv

