

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Writ Appeal No.1895 of 2017

Judgment: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No.38274 of 2017. The 1st respondent herein filed the Writ Petition to declare the inaction of the Sadasivpet Municipality in not considering the 1st respondent-writ petitioner's representations dated 3.10.2017 and 7.11.2017, and in not restraining the appellant herein from making illegal constructions without leaving set back space between Northern and Southern sides of the plots, as arbitrary and illegal.

In the order under appeal, the learned Single Judge noted the 1st respondent-writ petitioner's contention that the appellant had, without obtaining permission for construction, started making construction; he had encroached into the petitioner's site and had laid pillars; and despite representations dated 3.10.2017 and 7.11.2017, the Commissioner, Sadasivpet Municipality was not taking action against the appellant to stop the illegal construction. The Learned Standing Counsel, for the third respondent-Municipality, stated before the learned Single Judge that the appellant was proceeding with construction without obtaining any permission from the Municipality; a notice dated 8.11.2017 was already issued to the appellant; and the Municipality had already initiated action against him.

Taking note of the grievance of the 1st respondent-writ petitioner that the Municipality was not stopping the illegal construction made by the appellant, the learned Single Judge disposed of the Writ Petition directing the Commissioner, Sadasivpet Municipality to consider and dispose of the 1st respondent-writ petitioner's representations dated

3.10.2017 and 7.11.2017 within three weeks, and communicate his decision to the 1st respondent-writ petitioner within a week thereafter. The Commissioner, Sadasivpet Municipality was further directed to stop illegal construction being made by the appellant till the said exercise was completed.

Sri Mohd. Osman Shaheed, learned counsel for the appellant (third respondent in the Writ Petition), would submit that the 1st respondent herein had obtained the order under appeal suppressing the fact that he had filed a Suit in O.S. No. 258 of 2017 on the file of the learned Senior Civil Judge, Sangareddy; he had also suppressed the fact that an order was passed in I.A. No. 927 of 2017 in O.S. No. 258 of 2017 dated 30.10.2017; on the short ground, of suppression of relevant and material facts, the learned Single Judge ought to have dismissed the Writ Petition; and the Writ Petition was disposed of without putting the appellant on notice, and without giving him an opportunity of being heard.

On the other hand, Sri K. Raja Reddy, learned counsel for the 1st respondent-writ petitioner, would submit that the Suit filed by the 1st respondent has no bearing on the dispute raised in the Writ Petition; the 1st respondent-writ petitioner has not suppressed the fact of his having filed the Suit; the Writ affidavit specifically refers to the Suit having been filed; the appellant was making construction without leaving any set backs, and without obtaining any approval from the Municipality; and the learned Single Judge was, therefore, justified in directing the Commissioner, Sadasivpet Municipality to restrain the appellant from making any further construction as no such permission had been obtained for making construction.

The learned Senior Civil Judge, Sangareddy, in his order in I.A. No. 927 of 2017 in O.S. No. 258 of 2017 dated 30.10.2017, recorded the

undertaking filed by the appellant that he had not encroached into the land belonging to the 1st respondent-writ petitioner; he would not interfere with the possession and enjoyment of the 1st respondent-writ petitioner in the suit schedule property; and if any encroachment was found, he undertook to remove the said construction after the conclusion of the main Suit. Recording the said undertaking, the learned Senior Civil Judge granted the appellant herein liberty to proceed with construction in accordance with the sanctioned plan. The learned Senior Civil Judge also observed that, if any deviation or encroachment was found, the appellant herein was liable to remove the same at his cost.

As was contended before the learned Single Judge both by the 1st respondent-writ petitioner and on behalf of the Commissioner, Sadasivpet Municipality, the construction by the appellant is said to have been made without sanction of the Municipality, and without leaving any set backs. The order of the learned Single Judge cannot, therefore, be faulted. Since the learned Single Judge has merely directed the Municipality to consider the representations of the 1st respondent-writ petitioner, suffice it to also permit the appellant to make a representation to the Municipality.

Sri Mohd. Osman Shaheed, learned counsel for the appellant, would submit that such a representation would be made within ten days from today. Sri K. Raja Reddy, learned counsel for the 1st respondent-writ petitioner, submits that the representations submitted by the 1st respondent-writ petitioner have already been considered and orders have been passed on 8.12.2017. Suffice it, therefore, to direct the Commissioner, Sadasivpet Municipality to consider the appellant's representation also, and pass orders within two weeks from the date of receipt of the said representation. Till orders are

passed thereupon, no further action shall be taken to demolish the subject property. The appellant shall not make any further construction in the meanwhile. If he resorts to any such construction, it is open to the Commissioner, Sadasivpet Municipality to take action to prevent him from doing so. It is also made clear that, in case the appellant does not avail the opportunity of submitting his representation within ten days from today, it is open to the Commissioner, Sadasivpet Municipality to give effect to his order dated 8.12.2017, and take action pursuant thereto in accordance with law.

The Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.S.K. JAISWAL, J)

1st February, 2018

Note:

Furnish c.c. by 5.2.2018.
b/o
pnb



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M.S.K. JAISWAL**



Writ Appeal No.1895 of 2017

Date:1.2.2018

pnb

