

SUPREME COURT OF INDIA

ECE Industries Limited

Vs.

S. P. Real Estate Developers P. Ltd.

(Tarun Chatterjee and R. M. Lodha JJ.)

22.07.2009

ORDER

1. The instant Special Leave Petitions arise from an Appellate Order of the High Court of Andhra Pradesh at Hyderabad, by which the High Court had affirmed the order of the Second Additional City Civil Judge at Hyderabad refusing to grant an order of injunction till the disposal of the suit which has been filed by the plaintiff-appellant for declaration and injunction.

2. In the aforesaid suit, two applications for injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure were filed by the plaintiff-appellant. The relief that was prayed for in one of the applications for injunction was to restrain the respondents from alienating the suit property including the structures coming up thereon and the other for injunction over the suit property from changing the nature thereof pending disposal of the suit.

3. While deciding the said applications for injunction, an Advocate Commissioner was appointed by the trial Court to find out the extent of construction raised by the defendants-respondents in the suit property in view of the fact that there was a denial on the part of the plaintiff-appellant that there was no construction at all.

4. The Advocate Commissioner appointed by the trial Court submitted his report, which is already on record. While deciding the applications for injunction, the said report was taken into consideration by the trial Court and as per that report and also as per the photographs produced by the Advocate Commissioner, the trial Court was prima facie of the view that construction work was undertaken and completed which had required the respondents to invest crores of rupees. The trial Court, considering this fact that substantial construction has already been completed, had refused to grant an order of injunction in favour of the plaintiff-appellant from making any construction in the suit property and, accordingly, the applications for injunction were rejected with the following conditions :-

“1) That the respondents shall deposit the balance value of the property, which comes to around Rs. 28,00,000/- into Court within one month.

2) That it shall furnish bank guarantee for the value of the unrealized post dated cheques, and pay/deposit the value of four cheques, which were dishonoured, within one month from today.

3) That the respondents shall not claim equities over the construction made in the land and they are bound by the decision in the suit. The Respondents shall furnish the particulars of the prospective buyers of the residential units in advance to the Competent Authority/Urban Land Ceiling, and it must be made clear to the prospective buyers that their purchases are subject to the result of the suit by making a 'specific recital' in the agreement of sale or sale deed, as the case may be.”

5. Aggrieved by the order of the trial Court, the appeals were preferred before the High Court of Andhra Pradesh at Hyderabad, which by the impugned order, had affirmed the order of the trial Court on the question of construction in the suit property, but set aside the conditions imposed by the trial being Clauses Nos. 1 and 2 of the order of the trial Court. It is these concurrent orders, which are now under challenge before us in these Special Leave Petitions.

6. Before us, both the learned senior counsel appearing for the parties had drawn our attention to the report of the Advocate Commissioner. Mr. Nariman, learned senior counsel appearing for the plaintiff-appellant, sought to argue after taking us to the report of the Advocate Commissioner that no construction has been made in the suit property whereas Dr. Singhvi, learned senior counsel appearing on behalf of the defendants- respondents, after taking us to some of the portions of the Advocate Commissioner's report and also by producing recent photographs to show substantial constructions already made in the suit property, sought to argue that the Appellate Court was fully justified in affirming the order of the trial court holding that substantial construction has been made in the suit property for which the respondents have invested huge sum of money.

7. After hearing the learned counsel for the parties and after going through the Commissioner's report, we are of the prima facie view that before deciding this Special Leave Petition finally on merits, it would be proper in order to do complete justice to find out the actual position of the suit property i.e. :-

“i) Whether constructions have been made on the different blocks of the suit property and how many blocks are still remaining vacant ?

ii) If constructions have been made, what is the nature and extent of such constructions?

iii) Whether such constructions can be said to be substantial constructions or not ;

iv) Whether constructions have been completed in some blocks of the suit property and the flats constructed in such blocks are ready for use and occupation ;

v) Also to see the local features.”

8. To find out the aforesaid, we appoint Shri Ram Krishna Prasad, a learned Advocate of this Court, who will visit the suit property in course of this week by giving prior notice to both the sides and submit a report on the above-mentioned items by next Monday i.e. on 27th of July, 2009. The matter will be placed again for consideration of the said report on 28th of July, 2009. We make it clear that there will be no further hearing in the matter.

9. The entire expenses of the learned Advocate Commissioner for visiting the site and coming back to Delhi, shall be met by the respondents and the remuneration of the Commissioner shall also be borne by the respondents, which is assessed at Rs.30,000/-, to be paid in course of this Friday i.e. 24th of July, 2009.