

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.33972 of 2011

Date: 26-08-2015

Between:

Syed Sabir

.... Petitioner

AND

The Greater Hyderabad Municipal Corporation,
Represented by its Commissioner, Saifabad, Hyderabad
and two others

.... Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.33972 of 2011

ORDER:

This writ petition is filed for a mandamus declaring the action of the respondents 1 and 2 in regularizing illegal construction made by the 3rd respondent in Door No.2-3-190, Ramagopalpet, Nallagutta, Secunderabad as well as the action of the 3rd respondent to use the subject building for commercial purpose as illegal and arbitrary and for a consequential direction to respondents 1 and 2 to take appropriate action against the 3rd respondent as per law.

2. The case of the petitioner is that he is residing in Door No.2-3-116, Nallagutta, Secunderabad whereas the 3rd respondent is also residing in the same locality bearing Door No.2-3-127 and the 3rd respondent made illegal constructions in the premises bearing Door No.2-3-190, Block No.75-C, MC.No.413,

admeasuring 49.44 square yards, Ramgopelpet, Nallagutta, Secunderabad, without obtaining any permission from the 1st respondent. In spite of several representations dated 01-06-2006, 05-06-2006, 10-03-2008, 01-04-2008, 25-10-2008 and 30-06-2011 by the petitioner to the respondent authorities about illegal construction of the 3rd respondent, the respondent authorities, having received the said representations, did not take any action thereon. Thereafter, the petitioner filed O.S.No.62 of 2006 on the file of I Junior Civil Judge, City Civil Court, Secunderabad against the respondents for perpetual injunction restraining the 3rd respondent from making any illegal constructions in the said premises and the said suit is pending and when the said suit is pending, the 3rd respondent also filed O.S.No.642 of 2006 on the file of I Junior Civil Judge, City Civil Court, Secunderabad for perpetual injunction against the 1st respondent herein and that the 3rd respondent also made a representation to the 1st respondent for regularization of her illegal construction, but the respondents 1 and 2, ignoring the factum of pending the suit O.S.No.642 of 2006 and without considering the objections of the petitioners and the relevant rules, regularized the building construction vide proceedings No.1348/BPS/Cir.No.18/NZ/GHMC/2008-2009, dated 02-11-2009 after levying penalty of Rs.37,632/-. Though the said regularization was granted to the 3rd respondent for residential building, the 3rd respondent constructed ground plus two floors being used for commercial purpose. In spite of bringing the said fact to the notice of the respondents 1 and 2, no action has been taken. Aggrieved by the said action, the present writ petition has been filed.

3. The respondents 1 and 2 contended without filing any

counter that the ground floor has been regularized for using the same as commercial purpose.

4. The 3rd respondent filed her counter denying the allegations of the petitioner and contending that her property was around 50 square yards in respect of which no permission is required to be obtained for making construction and she has already completed the construction and regularized the same under BPS scheme vide proceedings No.1348/BPS/Cir.No.18/NZ/GHMC/2008-2009 dated 02-11-2009 by paying necessary fees to the GHMC. In fact, the petitioner is a chronic litigant and he was in the habit of filing number of false cases against her and her family members. The petitioner, having knowing fully well the fact that the construction was regularized by the proceedings dated 02-11-2009, which was filed in O.S.No.682 of 2006, did not raise any objection and filed the writ petition belatedly when the said suit came up for judgment. It is further stated that the 3rd respondent and her family members having vexed with the attitude of the petitioner agreed to settle the matter and entered into Memorandum of Understanding on 01-10-2009 with the petitioner in which the petitioner agreed to withdraw all the cases filed against her and her family members and demanded an amount of Rs.4,00,000/- from them and the 3rd respondent accordingly paid the said amount through a Demand Draft No.TSA-526257, dated 01-10-2009 and the same was also encashed on 03-02-2010 by the petitioner, but the petitioner did not withdraw all the cases filed by him against the 3rd respondent and filed other fresh cases against her and her family members and that the petitioner is a chronic litigant and his sole motive and intention is only to harass and pressurize the people and extract money. It is further stated that a copy of Memorandum of Understanding dated

01-10-2009 and Certificate issued by Punjab National Bank show the encashment of cash by the petitioner. When equally efficacious remedy is available to the petitioner, this court has no jurisdiction to entertain the writ petition and the petitioner instead of availing the remedy has maliciously filed the present writ petition with ulterior motives and malafide intentions. It is further stated that the 3rd respondent has not made any construction on the second floor and there is no second floor. The 3rd respondent filed an application dated 31-03-2008 for regularization and deviations of ground and first floor and the GHMC also regularized the same by collecting the penalty amount from the petitioner for both commercial and residential. It is also stated that in the suit filed by the petitioner in O.S.No.682 of 2006 against the 3rd respondent, the respondents 1 and 2 has already filed their written statement admitted the fact of regularization of her property and that the petitioner is not at all neighbour of the property and he is staying about 50 houses away that too after four lanes away from the property and he is not yet all affected person nor he has got any right to challenge the regularization proceedings, and hence, sought for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner, Sri Chatla Madhu, learned counsel for the respondents 1 and 2 and Sunil Narsikar, learned counsel for the 3rd respondent.

6. In this case, it is an admitted fact that the petitioner filed O.S.No.682 of 2006 for grant of perpetual injunction restraining the defendants 1 and 2, their agents, servants, representatives, workmen from making illegal constructions in the suit schedule property and also for a direction to the 3rd defendant therein to take appropriate action against the defendants 1 and 2 for making

illegal constructions and the said suit was dismissed by the judgment and decree dated 25-01-2012. It is also not in dispute that the subject matter in the writ petition and the subject matter of the suit is one and the same, which is not disputed by either of the parties or their counsel during the course of their arguments. During the pendency of the suit, the proceedings in Pro.No.1348/BPS/Cir.No.18/ NZ/GHMC/2008-2009, dated 02-11-2009 were issued regularizing the unauthorized constructions made by the 3rd respondent. But there is no prayer challenging the said proceedings though the same are filed along with material papers. Though it is asserted that the said proceedings are filed into court on 29-10-2010, the petitioner filed the writ petition in December 2011. The petitioner had a remedy of appeal as per the rules contained in G.O.Ms.No.395 Municipal Administration & Urban Development (M1) Department, dated 17-06-2009 by way of filing appeal before the Committee constituted under the said Rules within 30 days from the date of receipt of the order, but the same has not availed. But, only after lapse of more than one year after filing of the regularization proceedings in the suit, the writ petition has been filed. It is not as though the petitioner is not aware of all those things because he has filed more than 20 cases on different issues, which may not be against the 3rd respondent and he has also filed appeal against the dismissal of the injunction suit filed by him and simultaneously he also filed a petition for amendment of prayer in the suit, but the same was dismissed. Learned counsel for the 3rd respondent stated that the appeal was also dismissed on 21-08-2015. The petitioner cannot simultaneously maintain the suit as well as the writ petition, more so, having entered into Memorandum of Understanding with the 3rd respondent and having received an amount of Rs.4,00,000/-, which

is not denied in the reply affidavit, the present writ petition has been filed. Having entered into Memorandum of Understanding in the year 2009, suppressing the said fact, the present writ petition has been filed. This attitude of the petitioner goes to show that the petitioner filed the writ petition for blackmailing the 3rd respondent and even the findings in the suit also show that the petitioner is a chronic litigant and the petitioner is not immediate neighbour. The person, who approaches under Article 226 of the Constitution of India, should come to the court with clean hands for invoking the jurisdiction for granting equitable relief.

In view of above facts and circumstances, I do not see any merit in the writ petition and the same is liable to be dismissed with costs.

Accordingly, the writ petition is dismissed with costs of Rs.10,000/- (Rupees ten thousand only) to be paid by the petitioner to the High Court Legal Services Authority. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A. RAJASHEKER REDDY, J

Date: 26-08-2015

Ksn