

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF
ANDHRA PRADESH

CIVIL REVISION PETITION No.1968 of 2015

Between:

Kokkanti Padma

... Petitioner

and

M/s.Keerthi Constructions and others

... Respondents

DATE OF JUDGEMENT PRONOUNCED: 27-07-2015

SUBMITTED FOR APPROVAL:

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1968 of 2015

ORDER :

This revision petition is filed against the order directing to maintain Status Quo as on the date of filing of the suit by the Courts below, is the subject matter herein. Originally, the plaintiffs 1 to 5 represented by M/s.Keerthi Constructions filed the suit in O.S. No.500 of 2011 against defendants for permanent injunction and it was being contested by the defendants. The plaintiffs as petitioners also filed a petition in I.A. No.2540 of 2011 seeking temporary injunction and the learned Senior Civil Judge, Kadapa by order dated 29.04.2014 directed both parties to maintain Status Quo existing as on the date of filing of the suit. Aggrieved by the same, the Appellant/respondent No.2 to the said I.A.No.2540 of 2011 presented a civil miscellaneous appeal before the learned Principal District Judge, Kadapa and the same was dismissed by order dated 10.03.2015 in C.M.A.No.10 of 2014. Aggrieved by the said order the appellant, who is defendant No.2/Respondent No.2, presented this revision

against the respondents who are Plaintiffs 1 to 5 and Defendant Nos.1 and 3 to 22.

2. For the sake of convenience, the parties hereinafter called as they are arrayed in the trial Court.

3. The main suit is filed by M/s.Keerthi Constructions represented by one Gali Ramaiah and four others for permanent injunction restraining the sole defendant-Municipal Corporation, Kadapa, restraining it from demolishing the structures located in the suit schedule residential complex (Keerthi Park View Apartments, in S.No.148/2 of Ac.0.67 cents. The defendants 2 and 3 to 22 respectively were added as per orders dated 11.09.2012. It is the case of plaintiffs that after obtaining necessary permission vide B.A.No.295/G1/2008, dated 30.10.2008 (Ex.P-1) from the 1st respondent/Municipal Corporation, constructed the suit schedule residential complex and most of the owners occupied their flats, that though the petitioners constructed the residential complex without any violation or deviation of plan approved by the Corporation, the respondents are unnecessarily trying to initiate action for demolition of the structures located in the

suit schedule property, that there is prima facie case and balance of convenience lies in favour of the petitioners and prayed to grant temporary injunction pending disposal of the suit. The respondent No.1, Municipal Corporation, filed counter opposing the petition contending that the suit is not maintainable as the petitioners have not complied with the mandatory requirements of statutory notice before filing the suit as provided by Section 685 of the Greater Hyderabad Municipal Corporation Act, 1955 (for brevity, GHMC Act) and the suit is liable to be dismissed, that the Municipal Corporation issued notice on 12.06.2011 (Ex.R-1) to the petitioners under Section 452 of the GHMC Act directing them to remove unauthorised constructions, that meanwhile Corporation also received representations from residents and flat owners on 18.06.2011 complaining that the plaintiffs constructed the building by deviating the original plan by closure of drive way from main road with wall construction besides 3 rooms in the stilt and floor parking area and two pent houses on the roof of 4th floor on the terrace and made unauthorised constructions, that again the Corporation issued (Ex.R-2) notice under Section 636 of GHMC Act on 16.07.2011 to the petitioners

calling them to remove the deviation and the petitioners failed to comply the said notice and failed to remove unauthorised constructions, therefore the respondent corporation removed the cross brick wall and one room in stilt floor on 13.10.2011 upon which the petitioners requested the corporation to grant week days time for removing the remaining unauthorised constructions and also deviation made by them and in the meanwhile the petitioners filed the present suit and obtained ad-interim injunction.

4. The respondent No.2, appellant herein, filed a writ petition No.29780 of 2011 before this Court against the respondent-Corporation and the same is pending and she also filed counter contending that she has purchased flat No.504 in the fifth floor along with parking and after construction and after handed over the same to the purchasers, the petitioners constructed the pent house on the roof of 5th floor, thereby causing inconvenience to the independent house owners who purchased the flat for valid consideration, that as per the sanctioned plan the main building entrance has opening of 80 feet to the main

road situated on the southern side and another 10 feet wide open land situated on the western side of the building which leads to 80 feet main road, that the petitioners after completion of entire construction has divided into two blocks by constructing a brick wall in the stilt thereby divided the front portion facing the main road and the rear portion which is violation of the sanctioned plan and thereby restrained the flat owners from using the drive way leading to 80 feet main road to parking area, that the entire front portion of the building used by the petitioners for commercial purpose and gave the same on lease to private school, though the petitioners got permission only for residential purpose; upon which the Corporation issued notice, that the petitioners did not react, that due to said deviations respondent No.2 has lost her right to enter apartment (flat No.504 in the 5th floor) from main road i.e., 80 feet, that the construction of the office room and double bed room flat on the western compound wall in the cellar area in the set backs is also unauthorised one, since the petitioners encroached said area left for setbacks and preventing light and air to the flats, that the three pent houses constructed on the roof of

4th floor are causing great inconvenience, besides infringement of flat owners right to use terrace, that in the event of fire accident, it would become very difficult for the flat owners to come out of the apartments safely, that even fire engine cannot enter into the premises since the setbacks have been occupied with unauthorised constructions as such the purchaser of flats have no safety and the deviations are committed by the petitioners, that there is no prima facie case and balance of convenience in favour of the petitioners, that the petitioners are not entitled to seek relief of injunction and prayed to dismiss the petition with costs.

5. The contest of respondents/defendants 3 to 22 (flat owners) is in almost sailing with plaintiff in saying that the flat owners created two gateways for ingress and egress to road on west (out gate) and South (in gate) of the apartments and to avoid inconvenience to the vehicles, that small room lying in stilt area for storing plumber implements etc., and to accommodate security guard at the stilt area (covered by Ex.P-3-photos) that 2nd respondents husband-K.V.N. Reddy is creating hurdles

with false petitions against the petitioners with R-1 Municipal Corporation, that any of the small deviations no way cause inconvenience to flat owners.

6. The learned Senior Civil Judge observed that as construction work of stilt area is still going on, the room is required to for security guard and to keep the material and implements till completion of construction and after completion of construction, if said rooms and pent houses at stilt and parking area on 4th floor not removed that can be removed to the extent of deviation to the approved plan and therefrom directed to maintain existing status quo.

7. The lower appellate Court by sitting against the order, impugned by 2nd respondent (D-2) observed that even no statutory notice before filing suit given under Section 685 of G.H.M.C.Act, 1955 (as also observed by trial Court and therefrom there is non-maintainability of a suit as laid down in 2003(2) ALD-207; in the case on hand when plaintiffs attribute malafides on the corporation officials, such notice is not required before filing of the suit and it is otherwise premature to give any finding on want of notice

or not on maintainability of suit, but to decide in suit, further as per contest of respondents-defendants 3 to 22, the deviations are negligible and not affecting right of enjoyment of flat owners to say there is conflict of interest between the flat owners viz., R-2 and R-3 to R-22 and thereby felt just to maintain existing status quo of date of suit to continue by confirming the status quo order passed by trial judge under equity and with a direction to dispose of the suit within three months from date of receipt of the appeal order.

8. From the above material on record, heard both sides at length in the revision and perused the material on record.

9. Now, the points that arise for consideration are

- (i) Whether the impugned status quo order of trial Court confirmed in appeal requires interference by this Court which sitting in revision against it within the limited scope under Article 227 of the Constitution of India and if so with what observations?
- (ii) To what result?

POINT No.(i)

10. It is the well settled proposition of law that injunction relief is an equitable relief within the sound judicial

discretion guided by law and governed by rules to be exercised by the Court to remedy by preventing wrongs and preserving rights (either by prohibitory (which includes preventive and protective) relief to maintain existing status quo or by mandatory relief to restore the status quo ante). For getting temporary injunction the three ingredients required to be satisfied are (i) prima facie case (which is though not the proof required of ultimate chance of success is something more than existing of a bonafide contention and a triable issue involved, for a serious question to be tried as held in ***M.Gurdas V. Rasaranjan***^[1]; (ii) balance of convenience (which is to decide in whose favour the scale tilts to mean the balancing of the comparative strength and weakness of case of the parties as held in ***Gujarath Bottling Company V. Cocola Co. Ltd***^[2] and (iii) irreparable injury (which whether results any damage to a person's right or reputation or property, that need not always be capable of not of measurement in terms of money to compensate as held in ***Dalpat Kumar V. Prahlad Singh***^[3]).

11. From the above principles with reference to the facts of the case on hand, there is undisputedly some deviations made in the constructions made for said violation to the approved plan the Municipal Corporation got right to remove or demolish to the extent of said violations. It is immaterial whether appears trivial for the other flat owners viz., defendants 3 to 22. There is no approval for pent houses which is nothing but encroachment of common air space over open terrace meant for all apartment owners and it is not that of developer or builder for nothing shown even specifically reserved. Further, there is no basis to say any malafides on the part of officials of 1st defendant Municipal Corporation to say (so far as prima facie case and balance of convenience concerned) suit without statutory prior notice lies. This observation, no doubt no way to prejudice trial judge in deciding suit on ultimate merits and appraisal of any further propositions. But prima facie suit won't lie, nothing to say prima facie case which is sine-qua-non, apart from balance of convenience and irreparable injury also to consider. There might be some

motive for 2nd defendant against plaintiffs and defendant Nos.3 to 22, but nothing shown the 1st defendant officials at the disposal of 2nd defendant to proceed without basis. In fact Ex.R-1 and R-2 notices issued by 1st defendant to remove the unauthorised constructions and when some removed, plaintiffs wanted to do and had time but did not; that is suffice to say the/action of 1st defendant officials cannot be attributed as malafide or without bonafides even.

12. The Courts below did not advert to the above important aspects, which require interference thereby for this Court within its limited sphere while sitting in revision against the impugned order of lower appellate Court confirming that of the trial Court. Coming to the extent of interference as the Apex Court in ***Govt. of N.C.T. of Delhi V. Raj Kumar***^[4] held that though the protection order of lower Court held improper, for the superior court the proper course would be to operate the same with direction for expeditious disposal of the suit.

13. Having regard to the above and while holding that

the impugned orders of lower appellate Court confirming that of trial Court to maintain existing status quo without discussing merits as to the pre-requisites of prima facie case, balance of convenience and irreparable injury, are unsustainable, however in view of the limitation on the power while sitting in revision and the course to be adopted the status quo order shall remain in force only for two months more from this date and in view of direction for expeditious disposal within three months given by lower appellate Court and direction by this Court also while reserving the matter for judgment on 03.06.2015 to proceed with trial and dispose of as directed by lower appellate Court, the trial Court shall proceed with day to day trial as contemplated by Order XVII Rule 2 C.P.C and complete within two months from this date and if not completed for any reason, once evidence of defendants 1 and 2 shown completed, the order of status quo will not continue for any time if gaining by defendants 3 to 22 so that the 1st defendant can proceed with demolition of any violations and deviations to the approved plan.

14. Accordingly and with the above directions the

revision is disposed of. The miscellaneous petitions,
pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:27-07-2015
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[\[1\]](#) AIR 2006 SC 3275
[\[2\]](#) (1995)5 SCC 545
[\[3\]](#) (1992)1 SCC 719
[\[4\]](#) (2004)13 SCC 88