

**HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

**Writ Petition Nos.15513 and 17069 of 2008**

**Date: 29-07-2015**

Between:

Mohammed Farhath Ali

.... Petitioner

AND

The Government of Andhra Pradesh, represented  
by its Principal Secretary (Revenue), Secretariat,  
Hyderabad and 3 others

.... Respondents

**HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

**Writ Petition Nos.15513 and 17069 of 2008**

**COMMON ORDER:**

Since the issue involved in both the writ petitions is in respect of same property, they are being disposed of by this common order.

2. W.P.No.15513 of 2008 is filed for a mandamus seeking a direction to the respondents not to proceed with the demolition of construction made by the petitioner in the appurtenant land of Block No.9 at Housing Board Colony, Old Malakpet, Hyderabad till the date of disposal of the applications, which are pending before Greater Hyderabad Municipal Corporation for penalization under Building Penalization Scheme; and Revenue Department in respect of Transfer or right under G.O.Ms.No.166, dated 16-02-2008.

3. W.P.No.17069 of 2008 is filed for a mandamus declaring the action of the respondents 1 to 3 in not demolishing the

unauthorized construction made by the 4<sup>th</sup> respondent herein and the writ petitioner in W.P.No.15513 of 2008 on the appurtenant land of block No.9 at Housing Board Colony, Old Malakpet, Hyderabad.

**W.P.No.15513 of 2008**

4. The case of the petitioner is that he is absolute owner of the schedule flat by virtue of registered sale deed executed on 08-08-2003 and he extended the first floor portion in the absence of sanctioned plan in the year 2003, but voluntarily submitted an application together with Demand Draft of Rs.6,000/- for penalization of unauthorized construction under Building Penalization Scheme on 22-05-2008 and the same is pending for disposal before the 2<sup>nd</sup> respondent-Corporation. The petitioner also filed an application in terms of G.O.Ms.No.166, dated 16-02-2008 for transfer of right in the matter of encroached land admeasuring about 5 yards and 86 yards for regularization of residential structure on 13-06-2008 vide No.15360 and on 03-07-2008 vide No.23400 before the Revenue Department both the petitions are pending before the Authority. The 4<sup>th</sup> respondent Assistant City Planner issued notice on 01-07-2008 for demolition of structure in question by overlooking the facility provided by the Government under Building Penalization Scheme and as well as Transfer of Title facility provided in accordance with G.O.Ms.No.166. Aggrieved by the said action of the 4<sup>th</sup> respondent, the present writ petition is filed.

5. The respondents 2 and 4 filed their counter stating that the petitioner filed O.S.No.5246 of 2004 on the file of IV Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction against

these respondents and the 5<sup>th</sup> respondent herein and the said suit was dismissed on 31-08-2007 with a direction to the respondent Corporation to initiate action against the illegal and unauthorized construction of the petitioner. The petitioner encroached the land of A.P. Housing Board and erected structures thereby in the said land and the respondents 2 and 4 initiated action against the illegal construction on 02-08-2008 after dismissal of O.S.No.5246 of 2004 and building penalization scheme will apply only to the real title owners of the property. When the suit filed by the petitioner is dismissed, the petitioner cannot maintain the present writ petition.

6. The 3<sup>rd</sup> respondent filed his counter stating that the petitioner encroached the appurtenant land and constructed room illegally without permission of the municipal authorities and the petitioner filed an application dated 13-06-2008 and 03-07-2008 under G.O.Ms.No.166, dated 16-02-2008 and the same was placed before the District Level Committee and upon the recommendations of the District Level Committee held on 27-10-2009 the application was rejected by the 3<sup>rd</sup> respondent in File No.R1/5733/09 on the ground that the land belongs to A.P. Housing Board and sought for dismissal of the writ petition.

7. The 5<sup>th</sup> respondent filed his counter stating that the petitioner has no right to extend the first floor portion over the appurtenant land of Block No.9, Housing Board Colony, Old Malakpet, Hyderabad and he is not entitled for regularization under the Building Penalization Scheme in terms of G.O.M.sNo.166, dated 16-02-2008 and as per the sale deeds executed by the A.P. Housing Board in favour of allottees, the appurtenant land is the common area to be enjoyed by all the flat owners and the flat owners are not entitled to raise construction over the appurtenant land. It is stated that the 5<sup>th</sup> respondent is the absolute owner of

the subject property, having purchased the same vide registered sale deed executed by A.P. Housing Board bearing Document No.3297 of 2004 dated 11-09-2004. The 5<sup>th</sup> respondent complained about illegal and unauthorized construction made by the petitioner and Mr. Viquar Farooque to the A.P. Housing Board and the Board officials with the assistance of Municipal authorities and police demolished the unauthorized construction made by Viquar Farooqui by following due process of law and failed to demolish the unauthorized construction made by the petitioner herein, though the suit filed by the petitioner is dismissed and sought for dismissal of the writ petition.

**W.P.No.17069 of 2008**

8. W.P.No.17069 of 2008 is filed by the 5<sup>th</sup> respondent in W.P.No.15513 of 2008 stating that he is absolute owner of Flat No.6, Block No.9, Housing Board Colony, Old Malakpet, Hyderabad, having purchased the same vide document No.3297 of 2004, dated 11-09-2004 and the 4<sup>th</sup> respondent, who is the petitioner in W.P.No.15513 of 2008 is absolute owner of Flat No.8, Block No.9, Housing Board Colony, Old Malakpet, Hyderabad and the 4<sup>th</sup> respondent along with one Viquar Farooqui encroached upon the appurtenant land of Block No.9 and made unauthorized construction. When the petitioner complained about illegal and unauthorized constructions made by the 4<sup>th</sup> respondent to the 2<sup>nd</sup> respondent, the 2<sup>nd</sup> respondent issued letter No.2617/E2/AEO/EE (S), dated 29-09-2007 to the 4<sup>th</sup> respondent and Viquar Farooqui directing them to remove unauthorized construction. After dismissal of the suit filed by the 4<sup>th</sup> respondent, the 1<sup>st</sup> respondent issued letters dated 09-04-2008 and 10-07-2008 to the respondents 2 and 3, but the respondents 1 to 3 have failed to

demolish the unauthorized construction made by the 4<sup>th</sup> respondent. Aggrieved by the same, the present writ petition is filed.

9. The 4<sup>th</sup> respondent, who is the petitioner in W.P.No.15513 of 2008, filed his counter stating that the petitioner's flat on the first floor is situated on the opposite side of the common staircase at eastern side and whereas the schedule construction of first floor made by the 4<sup>th</sup> respondent upon Government land on western side adjacent to Nala and there is a distance of East and West between the petitioner and respondent's flats. The petitioner is not at all resident of flat in question, whereas the said flat is let-out and the tenant is residing. The application for regularization of construction under Building Penalization Scheme and Transfer of Rights in respect of land encroachment filed on 22-05-2008, 13-06-2008 and 03-07-2008 are pending for disposal and the said facts were brought to the notice of respondents 1 to 3 and a status quo order was passed by this court in WPMP.No.20099 of 2008 in W.P.No.15513 of 2008 and the present writ petition is premature one and sought for dismissal of the writ petition.

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10. Even according to the petitioner in this writ petition, he made constructions without obtaining any sanctioned plan and his grievance is that as long as the applications made by him on 22-05-2008, 13-06-2008 and 03-07-2008 for regularizing the unauthorized construction as well as transfer of right in terms of G.O.Ms.No.166, dated 16-02-2008 are considered and decided, the 2<sup>nd</sup> respondent cannot take any action for demolition. The 3<sup>rd</sup> respondent in the counter affidavit categorically stated that the applications of the petitioner were placed before the District Level

Committee and upon recommendation of the Committee held on 27-10-2009 the applications of the petitioner were rejected by the District Collector, Hyderabad vide File No.R1/5733/2009 on the ground that the land belongs to A.P. Housing Board. Now, the petitioner filed WPMP.No.48665 of 2014 seeking impleadment of the Chairman, Telangana Housing Board, through Executive Engineer (HG) South Division, Telangana Housing Board, Hyderabad stating that he made an application for transfer of right before the Board on 24-02-2010 and the same is pending for disposal. But, the Chairman of Telangana Housing Board cannot be a necessary and proper party and the petitioner has not made the Telangana Housing Board as party to the writ petition. More so, the suit O.S.No.5246 of 2004 filed by the petitioner was already dismissed on 31-08-2007. The learned counsel for the petitioner has not shown any provision of law under which the petitioner is entitled for regularization of his illegal construction by encroaching the property of the Housing Board and the application for impleadment of the Chairman of the Housing Board is not in order, as such, the application is dismissed, as the same is only an afterthought. When once the application for regularization is rejected and the same became final, there is no impediment for the respondent authorities to take appropriate action in accordance with law. More so, the notice dated 01-07-2008 issued by the 4<sup>th</sup> respondent is neither challenged nor questioned even though the same is filed along with material papers. Therefore, the writ petition is totally devoid of merit and the same is liable to be dismissed.

**W.P.No.17069 of 2008**

The petitioner in this case, who is 5<sup>th</sup> respondent in W.P.No.15513 of 2008, sought for action against the 4<sup>th</sup>

respondent, who is the petitioner in W.P.No.15513 of 2008, about his illegal construction and since the applications for regularization of the construction made by the petitioner in W.P.No.15513 of 2008 is rejected and as the notice for demolition for structures dated 01-07-2008 issued by the 4<sup>th</sup> respondent in W.P.No.15513 of 2008 is not challenged by the petitioner therein, the respondent authorities can take appropriate action against the 4<sup>th</sup> respondent herein who is the petitioner in W.P.No.15513 of 2008.

Therefore, the respondents 1 and 2 herein are directed to take appropriate action in accordance with law against the 4<sup>th</sup> respondent in W.P.No.17069 of 2008 who is petitioner in W.P.No.15513 of 2008 in respect of unauthorized construction made by him.

In view of the circumstances stated above, W.P.No.15513 of 2008 is dismissed and W.P.No.17069 of 2008 is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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**A. RAJASHEKER REDDY, J**

Date: 29-07-2015

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