

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

W.P.No.27221 of 2012

Between:

Smt Adusumalli Venkata Ramani
and 2 others

... Petitioners/Appellant (s)

And

The District Collector
and 4 others

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 04.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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

-
-
-
-
-
-

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.27221 OF 2012

ORDER

-

The case of the petitioners is that they are permanent residents of Padmavathi Apartments bearing Door No.46-7-18/19, Rajahmundry, East Godavari District. While so, the respondents 4 and 5 initially constructed G + 2 floors as per the approved plan, but later they tried to construct 3rd and 4th floors without obtaining valid permission from the 3rd respondent, for which all the flat owners raised their objection. The petitioners filed O.S.No.1005/94 on the file of Principal Junior Civil Judge, Rajahmundry seeking mandatory injunction for removal of 3rd and 4th floors including the illegal constructions made in the cellar and obtained injunction orders in IA.No.3681/94 restraining the respondents from construction of the 3rd and 4th floors. Later, due to intervention of the elders, the petitioners have withdrawn the above suit. Thereafter the petitioners and other purchasers entered in a Memo of understanding wherein it was agreed that the respondents 4 and 5 can sell flats in 3rd and 4th floors for residential purpose and also agreed to remove constructions in the cellar and not to construct further constructions on the top of the 4th floor etc. Contrary to the terms of the said compromise, the respondents 4 and 5 began to construct 5 and 6 floors without any approved plan from the 2nd respondent corporation. In those circumstances, the petitioner submitted representations dated 25.09.2003, 05.10.2011 and 15.12.2011 to the 2nd and 1st respondents respectively requesting to take necessary action to stop the illegal constructions. In pursuance to the said representations, the 3rd respondent informed that the applications submitted by the 5th respondent for regularisation of 3rd and 4th floors under BRS scheme were rejected and no application was made for construction of 5th floor and also informed that action will be taken for removal of illegal constructions. But till today, no action has been

initiated by the respondents. Aggrieved by the same, the present writ petition is filed.

Counter is filed by the 3rd respondent admitting that the petitioners are the absolute owners of their respective flats in Padmavathi Apartments and that the constructions made in the 3rd and 4th floors and ground floor were regularised vide U.C.B.A.No.2129/1998-G1 dated 08.03.2001 by the Rajahmundry Municipal Corporation. It is also stated that though the respondents 4 and 5 constructed the two additional floors in violation of the approved plan, the respondents and other flat owners got the additional floors regularised under BRS scheme vide U.C.B.A.No.2129/1998-G1, dated 08.03.2001 by submitting necessary plans along with the required penal amount to the Rajahmundry Municipal Corporation in terms of G.O.Ms.No.419, MA., dated 30.07.1998. It is further stated that as on today no attempt was made by the respondents 4 and 5 for further constructions unauthorizedly. It is submitted that

Smt B.L.V.Padmavathi, resident of Padmavathi Apartments has filed an application under BPS vide B.P.s.No.2382/2008-G2 dated 29.05.2008 duly paying the penal amount of Rs.12,000/-, to the 3rd respondent and the 3rd respondent issued an endorsement on 01.07.2009 asking her to furnish the required documents as per BPS Rules. But there was no response from her. It is also stated that the room constructed in cellar floor being used as store room by the 4th and 5th respondents would be removed by following due process of law and action will be taken against the deviations as per law.

Counter is filed by the 4th and 5th respondents stating that the 3rd and 4th floors constructed by them were regularised in the year 2001 where as the petitioners have filed the present writ petition in the year 2012. It is also stated that as the petitioner have filed O.S.No.1005 of 1994 and have withdrawn the same, it is not open for them to re-agitate

the matter after 11 years.

Heard the learned counsel for the petitioner, learned counsel for the respondents 2 and 3 and the learned counsel for the respondents 4 and 5.

Since the additional floors constructed by the respondents 4 and 5, in violation of the approved plan were already regularised by the 3rd respondent vide proceedings in U.C.B.A.No.2129/1998-G1, dated 08.03.2001, it cannot be said that the 3rd respondent has not taken any action. Once the constructions are regularised, they cannot be termed as illegal and that the petitioners have also not challenged the regularisation proceedings issued in favour of the respondents 4 and 5 in the year 2001. The 3rd respondent in his counter admitted that there is a room in the cellar which is constructed against the approved plan and the same will be removed by following due process of law.

In view of the submission made by the 3rd respondent in his counter, the 3rd respondent is directed to take action in respect of unauthorised constructions said to have been made in the cellar, by following due process of law within a period of four (4) weeks from the date of receipt of copy of the order.

With the above direction, the writ petition is disposed of. There shall be no order as to costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 04.08.2015
dv