

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.9280 OF 2012

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ORDER:

This petition is filed for a writ of '*Mandamus*' declaring the action of the 2nd respondent in issuing notice vide Roc.No.1603/2012-G2, dated 30.03.2012 to frustrate the rights and contentions of the petitioner during the pendency of IA.No.2304 of 2010 in AS.No.204 of 2010 on the file of the III Addl.District Judge, Kakinada, East Godavari District, at the instance of the 3rd respondent, without following due process of law, as illegal and arbitrary and for a consequential direction to the 2nd respondent not to take any coercive steps in pursuance of the impugned notice pending disposal of the aforesaid IA or the main appeal.

The case of the petitioner is that when he constructed A1 flat in the ground floor covering part of parking area, the respondent-Municipality issued notice to the petitioner, as such the petitioner filed OS.No.1547 of 2003 seeking direction not to demolish the constructions made in the parking area. In the said suit the 3rd respondent herein filed counter claim and the suit was dismissed with costs decreeing the counter claim. In the said suit the Municipal Corporation is also directed to demolish the petitioner's flat within three months from the date of the judgment. Against the same, the petitioner filed AS.No.204 of 2010 along with IA.No.2304 of 2010 seeking suspension of operation of the decree and judgment of the trial Court in OS.No.1547 of 2003. Now the petitioner filed the present writ petition for a direction to the 2nd respondent not to take any coercive steps against the petitioner pending disposal of IA.No.2304 of 2010 in OS.No.1547 of 2003.

The 2nd respondent filed counter affidavit stating that as per the directions issued in the counter claim made in OS.No.1547 of 2003, the respondents have initiated action.

Heard.

When the matter is listed on 03.04.2012, it was adjourned and when the matter is listed on 11.06.2015, there is no appearance on behalf of the petitioner. When the matter is listed to-day i.e. 23.06.2015, representation is made on behalf of the learned counsel for the petitioner seeking time once again.

In the instant case the petitioner himself filed OS.No.1547 of 2003 against the 2nd respondent-Corporation not to demolish the structures and in the said suit the 3rd respondent herein filed counter claim and the said suit itself is dismissed while allowing the counter claim made by the 3rd respondent. In the said suit, the 2nd respondent Corporation is also directed to take action for demolition. In pursuance of the same, the 2nd respondent issued notice dated 30.03.2012. Though petitioner filed appeal in AS.No.204 of 2010 along with stay petition in IA.No.2304 of 2010 seeking suspension of operation of the decree and judgment of the trial Court in OS.No.1547 of 2003, it is not stated in the writ affidavit that whether any stay was granted to the petitioner or not in the first appeal. Meanwhile, present writ petition is filed. Since petitioner has already instituted suit and after dismissal of the same filed first appeal which is pending, he cannot file the present writ petition. The petitioner cannot pursue parallel proceedings. As such, the writ petition is misconceived and also frivolous.

Accordingly, the writ petition is dismissed with costs of Rs.5,000/- payable to the Legal Services Authority, Hyderabad.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

23.06.2015

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