

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.28381 of 2013

Date: 02-06-2015

Between:

A. Hanumantha Rao

.. Petitioner

AND

The Hyderabad Metro Development Authority,
Represented by its Commissioner, Hyderabad
and 3 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.28381 of 2013

ORDER:

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This writ petition is filed for a mandamus declaring the action of the respondents 1 and 2 in allowing the 4th respondent to start illegal construction without there being any sanctioned final layout and sanctioned building permission particularly in a situation where 2nd respondent issued notice for stopping of construction and kept quiet with an oblique motive as illegal and arbitrary and for a consequential direction to the respondents 1 to 3 to take immediate steps against the 4th respondent from proceeding with any illegal construction in Survey No.63 of Nadergul village in an extent of Ac.3.05 guntas.

2. The case of the petitioner is that the father of the petitioner is the owner and possessor of Ac.16.06 guntas of land in Survey No.63 of Nadargul village and the petitioner inherited the same by succession and in enjoyment of the same as owner and possessor. It is stated that when the 4th respondent filed two suits for permanent injunction against some third parties, the petitioner got himself impleaded in the same and contested the suits and when decrees were passed in the said suits, the petitioner preferred two appeals in A.S.No.399 of 2011 and A.S.No.400 of 2011 questioning the said decrees and thereafter, the appellate court allowed the appeals dismissing the suits filed by the 4th respondent. Pending above suits, the 4th respondent made an application to the Revenue Divisional Officer, Ranga Reddy, for conversion of agricultural land into non-agricultural purposes for an extent of Ac.3.13 guntas out of Ac.16.36 guntas claimed by him and the Revenue Divisional Officer, Ranga Reddy passed an order in File No.B1/4459/2010, dated 04-01-2011 converting the land into non-agricultural purposes. Challenging the said order, the petitioner preferred an appeal to the Joint Collector, Ranga Reddy in Case No.D2/237/2011 and by an order dated 28-04-2012, the order of the Revenue Divisional Officer was set aside and aggrieved by the said order, the 4th respondent filed W.P.No.15336 of 2012 and the same was disposed of directing the Revenue Divisional Officer, Ranga Reddy to pass fresh orders on the application of the 4th respondent for conversion of agricultural land into non-agricultural purposes, after taking into account the objections raised by the petitioner herein. Pursuant to the said order, the 4th respondent filed W.A.No.1352 of 2012 and the same was disposed modifying the order of the learned single Judge by setting aside the order passed by the Joint Collector, Ranga Reddy dated 28-04-2012 in Case No.D2/237/2011, while confirming the direction issued to the 3rd respondent therein-primary authority to pass fresh orders, but no orders are passed by the Revenue Divisional Officer, Ranga Reddy as of now. It is further stated that the 4th respondent, without disclosing the above facts, obtained proceedings L.R.No.95/Layout/ HADA/HMDA2010, dated 02-08-2012 and by virtue of said proceedings, the 4th respondent is proceeding with construction of two houses without there being any land use conversion certificate since the same is under challenge in W.P.No.36952 of

2012. Thereafter, the 2nd respondent issued notice to the 4th respondent on 23-05-2013 for stopping further construction, but no action has been taken thereafter. Aggrieved by the same, the present writ petition is filed.

3. The 2nd respondent filed its counter stating that the 1st respondent has accorded draft layout in Survey No.63/A of Nadargul village, Saroornagar Mandal, Ranga Reddy District vide Lr.No.95/Layout/ HADA/HMDA/2010, dated 02-08-2012 along with approved plans for construction of duplex houses. On receiving representation of the petitioner dated 27-04-2013, a notice was issued to the 4th respondent on 23-05-2013 in No.UCI/46/TPS/1/2013 under Section 228 (1) (2) of A.P. Municipalities Act and under Sections 41 and 43 (1) of A.P. Urban Areas (Development) Act, 1975, in response to which, the 4th respondent submitted his explanation on 25-05-2013 enclosing approval accorded by the 1st respondent along with plans. That the 1st respondent issued draft layout approval in the said survey number and forwarded to the executive authority erstwhile Nadargul Gram Panchayat to release the same and after receiving the interim orders from this court, the 2nd respondent has ensured that the 4th respondent does not proceed with any further construction and that as on date, no construction activity has taken place on the site of the 4th respondent.

4. The 4th respondent filed his counter stating that no rights of the petitioner, much less any fundamental rights are violated so as to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner is neither the owner nor possessor of the land in Survey No.63 admeasuring Ac.16.06 guntas situated at Nadargul village, Saroornagar Mandal, Ranga Reddy District and the 4th respondent is the owner and possessor of Ac.16.16 guntas of land in Survey No.63, out of which Ac.8.08 guntas is his ancestral property and the remaining extent of Ac.8.08 guntas was purchased through registered sale deed dated 23-08-1999 from the erstwhile owners and he was issued pattedar pass book and title deed in respect of the above property. That basing on the pahanies for the year 1999-2000, this Court in W.P.No.24775 of 2002 held that pattedar pass books and title deeds in favour of the 4th respondent are genuine and directed the District

Collector to conduct enquiry with respect to memo bearing No.B/9635/2001, dated 10-12-2001. That the land in Survey No.63 was sub-divided into Survey No.63/A admeasuring Ac.8.08 guntas, Survey No.63/AA admeasuring Ac.4.04 guntas and Survey No.63/E admeasuring Ac.4.04 guntas and presently, the development work is being undertaken in Survey No.63/A to an extent of Ac.3.05 guntas, which happens to be his ancestral property, for which he had obtained sanction plan from the 1st respondent and that development of the Group Housing Project is in advanced stage and road formation has taken place and 11 units with ground plus upper floors have been completed. That the petitioner filed W.P.No.36952 of 2012 seeking to set aside the permission granted by the 1st respondent and the same is pending and that taking advantage of creation of Nadergul Gram Panchayat into Badanget Nagar Panchayat by proceedings dated 26-03-2013, the petitioner made a representation to the 2nd respondent, which has not been filed in the present writ petition, basing on which a notice was issued on 23-05-2013 by the 2nd respondent asking the 4th respondent to stop construction.

5. That the petitioner filed W.P.No.14360 of 2013 seeking directions against the 2nd respondent therein to consider his representation regarding alleged unauthorised constructions being taken place in Survey No.63 of Nadergul village and also to stop construction and the same was dismissed as withdrawn on 05-09-2013 without seeking any liberty to file fresh writ petition and the said fact of filing the said writ petition and withdrawal of the same has not been brought to the notice of the court, which is suppression of material fact and that now claiming the inaction on the part of the 2nd respondent, the petitioner filed the present writ petition. That the 4th respondent obtained permission for Group Housing (Gated community) for which necessary fee has been paid by him and the plans have been submitted for construction of 50 Duplex Houses and the same has been previously intimated to the then Nadargul Gram Panchayat by the 1st respondent vide letter dated 25-10-2012 in Proceedings No.95/Layout/HADA/HMDA/2010 and the proceedings in Lr.No.95/LO/Plg/SHZ/HMDA/ 2010, dated 06-12-2012 wherein it is clearly stated that clause 12 of original sanction plan dated 02-08-2013 does not apply, as such, permission granted by the 1st respondent is not a mere layout, but it includes

construction permission. That in W.P.No.36952 of 2012, the 4th respondent filed various plans with regard to construction permission granted in his favour as well as relevant particulars of fee paid by him to the 1st respondent and without disclosing the said material, the petitioner filed the present writ petition. It is further stated that the petitioner has no locus standi, much less any of his rights are infringed so as to prefer the present writ petition under Article 226 of the Constitution of India. That the 1st respondent is empowered under HMDA Act, 2008 to give construction permission as well as development permission and the 4th respondent obtained the same by following due procedure, and therefore, the stand of the petitioner that the 4th respondent has no permission whatsoever is illegal, malafide and contrary to the provisions of HMDA Act and that no permission is required from a local authority when necessary permission for construction has been obtained from the 1st respondent and hence, the writ petition is liable to be dismissed.

6. Sri K.V. Bhanu Prasad, learned counsel for the petitioner contends that the 4th respondent is making construction in the subject property belonging to the petitioner without obtaining building permission as envisaged under Section 19 (2) of the Hyderabad Metropolitan Development Authority Act, 2008 (HMDA Act) and that the impugned permission obtained by the 4th respondent is only a draft layout, but not a building permission. He also contends that the permission for conversion of agricultural land into non-agricultural purposes granted by the Revenue Divisional Officer, Ranga Reddy was set aside by the Joint Collector, Ranga Reddy and the same was challenged by the 4th respondent before this Court in W.P.No.15336 of 2012 and this court in the said writ petition directed the Revenue Divisional Officer, Ranga Reddy to pass fresh orders on the application of the 4th respondent, but as of now no orders are passed thereon and that without any land conversion permission, the 4th respondent is making construction basing on the impugned permission. He further contended that the 2nd respondent, in spite of giving notice to the 4th respondent to stop construction, has not taken any action thereafter. He further contended that having lost in civil litigation, the 4th respondent cannot proceed with further construction.

7. On the other hand, learned standing counsel for the 2nd respondent contends that permission was granted by the 1st respondent and when the representation is made by the petitioner, a notice was issued to the 4th respondent under Section 228 (1) (2) of A.P. Municipalities Act and under Sections 41 and 43 (1) of the A.P. Urban Area (Development) Act, 1975 and the construction activity has been stopped.

8. On the other hand, learned counsel for the 4th respondent contends that the 1st respondent issued the impugned proceedings dated 02-08-2012 to develop layout in Survey No.63/A, Nadargul, Saroornagar Mandal and the plans attached to it are also approved, which includes grant of building permission and that the 1st respondent issued a letter in Lr.No.95/LO/Plg./SHZ/HMDA/2010, dated 06-12-2012 deleting condition No.12 in the draft layout as it is a Group Housing Layout (Gated Community). By virtue of non-obstante clause contained in Section 53 of the HMDA Act, the provisions of the HMDA Act override the Greater Hyderabad Municipal Corporation Act, 1955, the A.P. Municipalities Act, 1965, the A.P. Panchayat Raj Act, 1994 and any other law, which are contrary to the provisions of HMDA Act. By virtue of Sections 20 and 21 of the Act, no separate building permission is required and that as per Sections 18 and 19 of the Act, all development powers vests with the 1st respondent. The petitioner filed W.P.No.14360 of 2013 with similar relief as sought for in the present writ petition and the same was withdrawn on 05-09-2013 without seeking any liberty to file a fresh writ petition and the said fact was also not disclosed in the present writ affidavit, which is suppression of fact and the writ petition is liable to be dismissed on that sole ground. In support of his contentions, he relied on **Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others**. He contends that no orders are passed in W.P.No.36952 of 2012, which was filed for setting aside the permission dated 28-02-2012 granted in favour of the 4th respondent. He further contends that as long as permission granted in favour of the 4th respondent is valid and subsisting, the petitioner cannot seek a direction for not proceeding with the construction and that the present writ petition is not

maintainable as the petitioner is in the habit of filing writ petitions one after another with mala fide intention to extract money from the petitioner, more so, the permission granted in favour of the 4th respondent is not under challenge in the present writ petition. He further contended that as on today there is no decree in favour of the petitioner in respect of the subject property, as such, the petitioner has no locus standi to maintain the writ petition. In support of his contentions, he relied on judgments in **Shri Sohan Lal v. Union of India and another**, and **Dalip Singh v. State of Uttar Pradesh and others**.

9. This Court passed an interim order dated 25-10-2013 by an elaborate order directing the 4th respondent to forthwith stop making/ undertaking all types of developmental/constructional activities in the land of Ac.3.05 guntas in Survey No.63/A of Nadargul village, and the same was challenged in W.A.No.1810 of 2013 and while dismissing the said writ appeal, the Division Bench directed for disposal of the writ petition itself as expeditiously as possible. It is also observed that *prima facie* the findings and observations of the learned single Judge will not be a binding factor at the time of final hearing of the writ petition, as such, the writ petition itself is taken up for hearing at the instance of both parties and also in view of the orders passed in W.A.No.1810 of 2013.

10. In view of rival contentions and pleadings, the issue that has to be considered is whether by virtue of proceedings dated 02-08-2012 issued by the 1st respondent, the 4th respondent is entitled to make constructions?

11. It is relevant to refer relevant provisions of the Hyderabad Metropolitan Development Authority Act, 2008, which reads as under:

“Section 2 (5) – “Building” includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or any other purposes, whether in actual use or not;

Section 2 (8) – “Development” with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land or both, and includes redevelopment, reclamation of land, conservation of environment, forming of layouts and sub-division of any land into plots and development of amenities.

Section-3: Declaration of Hyderabad Metropolitan region:- (1) As soon as may be, after the commencement of the Act, the Government may, by notification declare the Hyderabad Metropolitan region consisting of such urban or rural areas as a development area for the purposes of the Act.

(2) the Government may, by notification and in accordance with such rules as may be made in this behalf, -

The relevant portion of G.O.Ms.No.570 MA & UD Department, dated 25-08-2008, which reads as follows:

“In exercise of the powers conferred by sub-section (1) of Section 3 of Hyderabad Metropolitan Development Authority Act, 2008 (Andhra Pradesh Act No.8 of 2008), having regard to the extent of and scope for its urbanization and other relevant consideration, the Governor of Andhra Pradesh hereby specifies the area mentioned in the schedule hereunder as Hyderabad Metropolitan Region under the Hyderabad Metropolitan Development Authority Act, 2008 (Andhra Pradesh Act No.8 of 2008).

Jurisdiction of Hyderabad Metropolitan Region

Greater Hyderabad Municipal Corporation (GHMC)

Sangareddy Municipality

Buvanagiri Municipality

District wise villages covered in Ranga Reddy, Medak, Nalgonda and Mahaboobnagar Districts.

S.No.317 – Nadargul Saroornagar Ranga Reddy”

Section 18: All development powers of land to vest with Metropolitan Development Authority:- (1) Notwithstanding anything contained in any other law, all development powers of land shall vest in Metropolitan Development Authority.

Section 19: Development permission mandatory for undertaking Development:- Subject to the provisions of this Act, no development, or institution of use or change of use of any land shall be undertaken or carried out in the metropolitan region,-

1. Without obtaining a Development Permission order from the Metropolitan Development Authority:-

2. Without obtaining a building permission from the local authority in case of developments involving civil construction in accordance with the relevant local body Act, rules, regulations, orders, bye-laws and which shall be in conformity with sub-section (1) and conditions therein:

Section-53: Effect of other Laws:- (1) Notwithstanding anything contained in the Hyderabad Municipal Corporations Act, 1955, the Andhra Pradesh Municipalities Act, 1965, the Andhra Pradesh Panchayat Raj Act, 1994 or any other law which are contrary to the provisions of this Act, the provisions of this Act shall have an overriding effect over all such laws.

(2) The provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975 which are inconsistent with the provisions of this Act shall not be applicable to the metropolitan region constituted under Section 3 of this Act.

(3) Notwithstanding anything in any other law,-

(a) when Development permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that any permission, approval or sanction required under such other law for such development has not been obtained.

(b) when development permission for such development in respect of any land has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.”

12. Through the proceedings in Lr.No.95/Layout/HADA/HMDA/2010, dated 02-08-2012, permission is granted in favour of the 4th respondent, and condition No.12 as mentioned therein was subsequently deleted as it is a Group Housing Layout (Gated Community) vide Lr.No.95/LO/Plg./SHZ/ HMDA/2010, dated 06-12-2012, which reads as follows:

“The Executive Authority shall not approve and release any building permission or allow any unauthorized developments in the area under mortgage to HMDA in particular, and in other plots of the layout in general

until and unless the applicant has completed the developmental works and then got released the mortgaged land from HMDA.”

13. The counter affidavit of the 2nd respondent shows that the proceedings dated 02-08-2012 was issued along with approved plans for construction of duplex houses. As per Section 18 of the Act, all development powers of land are vested with the 1st respondent and as per Section 2 (8) of the Act, the definition “development” with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land or both, and includes redevelopment, reclamation of land, conservation of environment, forming of layouts and sub-division of any land into plots and development of amenities. So, by virtue of powers vested under Section 18 of the Act, the proceedings dated 02-08-2012 were issued in favour of the 4th respondent and the condition No.12 was deleted as per letter dated 06-12-2012. When once the 1st respondent has power under Section 18 of the Act to grant necessary permission for development and the same has been granted vide proceedings dated 02-08-2012 and as per the definition of “development” contained in Section 2 (8) of the Act, it includes carrying out of building. In view of the same, the 4th respondent is entitled to make constructions as per approved plans attached to proceedings dated 02-08-2012. More over, Section 53 of the Act has also overriding effect over other laws.

14. The proceedings dated 02-08-2012 issued in favour of the 4th respondent are valid and subsisting. When W.P.No.36952 of 2012 is filed challenging the proceedings dated 02-08-2012 issued by the 1st respondent, no interim orders were granted. Even in W.A.No.1783 of 2013 also, it is held that the observations made by the learned single Judge of this court will not be binding on the civil court, more so, the 1st respondent on perusing *prima facie* title basing on the pattadar pass books, title deeds and other documents, granted permission in favour of the 4th respondent and as long as the said proceedings dated 02-08-2012 hold the field, the 4th respondent cannot be restrained from

making constructions.

15. This Court in W.P.No.12258 of 2014 by relying on judgment in **T. Rameshwar v. Commissioner, Municipal Corporation of Hyderabad and others** (2006 (3) ALD 337) held that the complicated questions regarding title cannot be dealt by the Commissioner exercising power under Sections 428 and 429 of the Greater Hyderabad Municipal Corporation Act, 1955 and that if any claim is made as to the property in respect of which the permission has been sought for, it is open for the aggrieved party to approach competent civil court for adjudication of right, title and interest in the said property and seek appropriate relief from the Civil Court.

17. Further, the present writ petition is liable to be dismissed on the ground of suppression of material facts because the petitioner earlier filed W.P.No.14360 of 2013 almost with similar relief for stopping construction and the same was withdrawn on 05-09-2013 without seeking any liberty to institute fresh writ petition and the said fact is also not mentioned in the writ affidavit. As such, the writ petition is liable to be dismissed on the sole ground of suppression of fact.

15. In **Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others** (1 supra), it is held as follows:

“.....The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in [Daryao and Ors. v. The State of U.P. and Ors.](#), [1962] 2 S.C.R. 575 in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao's case (supra) is to be found at page 593 and it is as follows:

"If the petition is dismissed as withdrawn it cannot be a bar to a subsequent

petition under Art. 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other."

The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We however leave this question open....."

The facts in the present case are almost similar and covered by the dicta laid down by the Supreme Court in the above judgment.

19. In **Dalip Singh v. State of Uttar Pradesh and others** (3 supra), it is held as follows:

".....It was held that the court held that a party which has misled the court in passing an order in its favour is not entitled to be heard on the merits of the case....

.....it was held that in exercising power under Article 226 of the Constitution of India, the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution.....

..... it was held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable

and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.”

20. In **Shri Sohan Lal v. Union of India and another** (2 supra), it is held as follows:

“....If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided.....

.....Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty.....

21. The dicta laid down in the above judgments is applicable to the facts of the present case as the petitioner suppressed the material fact of filing the earlier writ petition for the similar relief.

22. In view of above facts and circumstances of the case and the law laid down by the Apex Court, the writ petition is liable to be dismissed on more than one ground.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 02-06-2015

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