

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.13226 of 2012

Dated 08.10.2015

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Between:

K.Ravinder

... Petitioner

and

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1.Panchayat Secretary,
Dulapally Gram Panchayat,
Quthbullapur Mandal,
Ranga Reddy District and another

...Respondents

Counsel for the petitioner: Mr.C.Ramachandra Raju

**Counsel for respondent No.1: Sri G.Narender Reddy, SC for
ZPPS (TS)**

**Counsel for respondent No.2: Sri Pottigari Sridhar Reddy, SC for
MPPS (TS)**

The Court made the following:

Order :

This Writ Petition is filed for a Mandamus to set aside order of respondent No.1, in Proceeding No.GP/2/2012, dated 25-01-2002, whereby, while rejecting the objections, dated 31-12-2011 and 09-01-2012, submitted by the petitioner, he has called

upon the latter to remove the unauthorised structures within seven days from the date of receipt of the same.

This case has some litigious history. There is a serious dispute between the petitioner on one side and respondent No.2 on the other with regard to a piece of land in Survey No.135/C of Dulapally Village, Quthbullapur Mandal, Ranga Reddy District. While it is the case of the petitioner that he has purchased 134 square yards of vacant Plot bearing No.20 in Survey No.135/C of the aforesaid village under registered sale deed, dated 24-07-2009, respondent No.2, who is his neighbouring plot owner, approached respondent No.1 with the grievance that the petitioner has encroached upon a part of his site and raised a structure. Thereupon, respondent No.1 issued notice, dated 25-07-2011, and the District Panchayat Officer issued notice, dated 28-07-2011, to the petitioner directing removal of the unauthorized constructions allegedly raised by the petitioner.

Besides filing OS.No.48 of 2012 against respondent No.2 for permanent injunction in the

Court of the learned Principal Junior Civil Judge, Medchal, the petitioner has also filed WP.No.22638 of 2011 questioning the above-mentioned notices on the ground that the same were issued at the instance of respondent No.2 without giving him an opportunity to put forth his case. In the light of the said grievance, this Court has disposed of the said Writ Petition on 11-08-2011, by permitting the petitioner to submit his objections before respondent No.1 and directing the latter to consider those objections and pass appropriate order in accordance with law. This Court has also permitted respondent No.1 to take further action subject to the order that may be passed by him on the objections submitted by the petitioner. A further direction was given that till such a decision is taken, the orders impugned in the Writ Petition shall not be given effect to and *status quo* shall be maintained by both the parties.

Post disposal of the aforesaid Writ Petition, as the petitioner has not submitted his objections, respondent No.1 has issued notice, dated 28-12-2011, wherein it was pointed out that as the petitioner failed to submit his objections as directed

by this Court, he shall remove the unauthorised constructions, failing which, the same will be removed without further notice. Evidently, on receipt of the said notice, the petitioner has submitted his objections on 31-12-2011 whereunder he has stated that he has purchased Plot No.20 on 24-07-2009; that even before his purchase, a compound wall was raised around 2 acres of land by its owner; that after purchase of the plot, he has consulted the Gram Panchayat for grant of building permission; that on the suggestion made by the District Panchayat Officer, the Sarpanch and the Secretary, he has paid the fee for grant of permission to Dulapally Manjeera Water Society; that later, the Gram Panchayat has issued No Objection Certificate (NOC) for release of electricity by the Department; that after raising construction, he is living there, but, the Gram Panchayat has failed to allot house number deliberately; and that respondent No.2 has deployed goondas and got the constructions raised by him demolished highhandedly. The petitioner has, accordingly, requested respondent No.1 to examine the link documents of respondent No.2. On consideration

of these objections, respondent No.1 has passed the impugned order wherein he has concluded that the petitioner has encroached upon the land of respondent No.2 and raised constructions without obtaining any permission either from the HMDA or from the Gram Panchayat. Accordingly, he has called upon the petitioner to remove the unauthorized constructions, failing which, the same will be removed at the expense of the latter by the Gram Panchayat itself.

Learned Counsel for the petitioner raised serious objection to the findings rendered by respondent No.1 with respect to the petitioner's alleged encroachment of the plot of respondent No.2. He has, however, submitted that respondent No.1 has not considered the plea of the petitioner that he has applied for building permission by paying the necessary fee.

As regards the first submission of the learned Counsel for the petitioner, I find some merit therein. The question whether the petitioner has encroached upon the plot of respondent No.2 or not does not fall within the purview of adjudication by respondent

No.1. However, if the petitioner applies for grant of building permission and if respondent No.2 raises an objection for grant of such permission on the ground that a part of his plot is encroached upon by the petitioner, it may be permissible for respondent No.1 to appoint a surveyor to find out whether any part of the plot of respondent No.2 is encroached upon by the petitioner and depending upon the result of such survey, take a decision as to whether permission shall be granted to the petitioner or not. Eventually, it is for the competent civil Court to decide the interse dispute between the petitioner and respondent No.2 over the property. Therefore, the finding rendered by respondent No.1, based on the complaint of respondent No.2 that the petitioner has encroached upon his plot, cannot be sustained.

As regards the direction issued by respondent No.1 to the petitioner to remove the structures unauthorisedly raised by him, admittedly, it is not the pleaded case of the petitioner that he has obtained any permission either from respondent No.1 or from HMDA. He has obtained challan in the name of Dulapally Manjeera Water Society by paying fee for grant of building permission. He has,

however, not pleaded that an application in this regard was made and that the same is pending before respondent No.1. Though the petitioner has pleaded in his objection that he has constructed a building and been residing therein, the learned Counsel appearing for him submitted that he has raised some small structure in the nature of a shed and that the same has been partly demolished by respondent No.1 at the instance of respondent No.2. But, as noted above, in the objections filed by the petitioner on 31-12-2014, he has specifically alleged that the constructions were also demolished by the goondas deployed by respondent No.2.

Be that as it may, whether small or big, the petitioner is not permitted to raise constructions without obtaining permission from the competent authority. The fact appears to remain that without such permission, the petitioner raised certain structures. In ordinary course, these structures are liable to be demolished. However, as respondent No.1 has not referred to the specific plea of the petitioner in his objection, dated 31-12-2014, that fee for building permission was paid in the name of Dulapally Manjeera Water Society, I refrain from

giving a direction to respondent No.1 to immediately demolish the structures.

In these facts and circumstances of the case, the petitioner is permitted to make an application for building permission before respondent No.1 within four weeks from the date of receipt of this order. Since it is the pleaded case of the petitioner that permission fee of Rs.10,800/- was already remitted in the above-mentioned Society, respondent No.1 shall examine the same and pass an appropriate order on his application. If proper proof of such payment is shown by the petitioner, respondent No.1 shall waive the requirement of payment of fresh fees. In a converse case, respondent No.1 shall pass an appropriate order regarding the fee. He shall also consider the application that may be made by the petitioner. As observed herein before, if any objection is raised by respondent No.2, respondent No.1 shall engage a Government surveyor to find out whether the petitioner has encroached upon the plot of respondent No.2 for the limited purpose of examining whether building permission shall be granted to the petitioner or not. Thereafter, respondent No.1 shall take a decision

and communicate the same to the petitioner.
However, action on demolition of the structure shall depend upon the order that may be passed by respondent No.1.

Subject to the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, WVMP.No.2389 of 2012 and WPMP.No.16479 of 2012 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 8th October, 2015
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