

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.13453 of 2015

Date:09.12.2015

Between:

T.Ch.Bhupathi,
S/o Rama Rao

..... Petitioner

And:

The State of A.P., repled., by its
Principal Secretary, Municipal Admn.,
Hyderabad and two others.

.....Respondents

Counsel for the Petitioner: Smt Jyothieswar Gogineni

Counsel for Respondent No.1: GP for Municipal Admn. (AP)

The Court made the following:

ORDER:

Feeling aggrieved by the inaction of respondent Nos.2 and 3 in granting approval for alterations in Parvathi Kalyana Mandapam, Subhalakshmi Nagar, Visakhapatnam, as per the petitioner's representations, dated 19.11.2012, 29.10.2014, 26.03.2015 and 30.03.2015, this Writ Petition is filed.

The brief facts leading to the filing of this Writ Petition are that in pursuance of the notification issued by respondent Nos.2 and 3 for auctioning the lease hold

rights of a property called Parvathi Kalyana Mandapam and belonging to respondent No.2-Corporation along with the shed, the petitioner submitted his tender and as he emerged as the highest bidder in the said auction, the same was knocked out in his favour on 15.9.2004. On 02.4.2005, the petitioner has made certain modifications to the said shed. Initially, the lease was granted for a period of three years and in the year 2007, it was extended for a period of 25 years, on condition of the petitioner paying the enhanced rent at 33.1/3% over the existing rent for every three years commencing from 11.11.2007. On 25.3.2010, a lease agreement was executed in favour of the petitioner on behalf of respondent No.2 up to 10.11.2029. One of the terms of the lease agreement is that the petitioner shall not make any alterations or additions to the lease hold premises without prior consent in writing by the lessor and that he is entitled to use the Kalyana Mandapam only. On 02.5.2014, respondent No.3 has issued a notice to the petitioner, wherein it is stated that the latter has constructed an AC sheet cum G.1 sheet Shed measuring 30.80 x 14.80 meters in the open place of the Kalyana Mandapam and has also started another unauthorised construction of AC sheet Shed with measurements of 23 meters x 15.70 meters without prior permission from respondent No.2-Corporation and that as the petitioner has committed breach of the lease condition that he shall not make any constructions under any circumstances or make any alterations or additions to the lease hold premises without prior consent in writing by the lessor, he was directed to submit explanation within three days from the date of receipt of the notice as to why action shall not be taken against him for violation of the terms and conditions of the lease. On 08.5.2014, the petitioner addressed a letter to respondent No.3 requesting to

provide 15 days' time *i.e.*, up to 23.5.2014 to submit his explanation to the said notice.

In the counter-affidavit filed by the Commissioner of respondent No.2-Corporation, it is averred that though 15 days' time is sought by the petitioner for submitting his explanation to the notice, dated 02.5.2014, he did not choose to submit any explanation; that the Corporation has been requesting him to remove the unauthorised constructions; and that as the petitioner failed to submit his explanation and also remove the unauthorised constructions made by him in the open place of the Kalyana Mandapam, on 29.03.2015, respondent No.2 has seized the unauthorised AC sheet Shed constructed by him in the open place of the Kalyana Mandapam under acknowledgment from him. It is further averred that thereafter, the petitioner made a representation on 30.3.2015 alleging that during Hudhud cyclone, which occurred in the month of October, 2014, Parvathi Kalyana Mandapam was partially damaged; that an additional construction in that regard is required to be made; and that accordingly, he requested respondent No.2 to approve the same. The counter-affidavit further averred that as the original Parvathi Kalyana Mandapam is in good condition, it does not require any alterations or additions, as alleged by the petitioner and that the requirement of further alterations was invented by the petitioner only for the purpose of filing the present Writ Petition.

No reply-affidavit is filed controverting the averments contained in the counter-affidavit.

At the hearing, Smt Jyothieswari Gogineni, learned counsel for the petitioner, strenuously submitted that the additional constructions were made by the petitioner with the prior permission of respondent No.2-Corporation as far back as the year 2005 itself; that the AC sheets Shed

which was constructed later was seized by respondent No.2-Corporation on the ground that the same was constructed without any permission; and that the petitioner's request for permission to allow him to carry on alterations and additions was with reference to the main Kalyana Mandapam which was leased out to him.

The above submission of the learned counsel runs contrary to the petitioner's own representation, dated 30.3.2015. In the unnumbered second paragraph of the said representation, the petitioner has tacitly admitted the fact that in lieu of providing a site admeasuring 92 feet x 62 feet to respondent No.2 for construction of an overhead water tank, he was permitted to raise constructions in the Kalyana Mandapam premises itself; that accordingly, he has raised the construction without increasing the constructable area; and in the unnumbered third para thereof, he has stated that during Hudhud Cyclone, which occurred on 11th and 12th October, 2014, the additional construction has collapsed.

Though the petitioner has asserted that the additional constructions were made with the permission of respondent No.2-Corporation, notice, dated 02.5.2014, issued to him is categorical to the effect that two huge AC sheet cum G.1 sheet Sheds measuring 30.80 x 14.80 meters and 23 x 15.70 meters were constructed by him without permission. Though the petitioner made representation, dated 08.5.2014, seeking 15 days' time to submit his explanation to notice, dated 02.5.2014, which period has expired on 23.5.2014, no explanation was submitted by him. However, more than 10 months after issue of the said notice, the petitioner has submitted representation on 30.3.2015 with a vague assertion that the constructions were shifted on the instructions of respondent No.2.

As noted hereinbefore, even as per the said representation, what was damaged was only the additional construction, which was raised without permission, and not the original Kalyana Mandapam. At least after respondent No.2 has asserted in the counter-affidavit that the petitioner has constructed two huge sheds without permission, neither a reply affidavit nor any material is filed in support of the petitioner's vague plea that the constructions were made with the permission of respondent No.2-Corporation.

In the light of the above facts, I am convinced that the petitioner is not entitled to any relief in the Writ Petition.

The Writ Petition is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, W.P.M.P.No.17665 of 2015 shall stand dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*08th December, 2015
DR*