

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.548 and 647 of 2013

COMMON ORDER :

Since, these two Civil Revision Petitions arise out of the same suit and between the same parties, they are being disposed of by this common order.

2. Petitioner in both the revisions is the plaintiff in the suit O.S.No.1302 of 2011 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad. He filed the said suit against the 3rd respondent herein for perpetual injunction restraining the officials of the 3rd respondent from interfering with the construction activity and also the peaceful possession and enjoyment of the petitioner over the suit schedule property or from demolishing any part of the same.

3. Along with the said suit, petitioner filed I.A.No.301 of 2011 for a temporary injunction restraining the 3rd respondent's officials from interfering with the construction activity being done by him pending the suit.

4. The respondents 1 and 2 are the persons residing in the same locality. They filed O.S.No.875 of 2011 in representative capacity invoking Section 91(1)(b) of Civil Procedure Code, 1908 before the same Court for a mandatory injunction directing the 3rd respondent to demolish the illegal construction raised over the suit schedule property alleging that the petitioner, having obtained permission for Ground + 1st Floor(Commercial) had violated the sanction plan and constructed Ground+ Three Floors.

5. The respondents 1 and 2 also filed I.A.No.523 of 2011 and 524 of 2011 to implead them as defendants 2 and 3 in the suit O.S.No.1302 of 2011 and as respondents 2 and 3 in I.A.No.301 of 2011 therein, respectively. They contended that without leaving any setbacks, the

petitioner had made illegal construction in gross violation of the sanctioned plan dt.15.06.2010 issued in his favour by the 3rd respondent; that representation had been given to the 3rd respondent against the same, for which they even issued a notice under Section 685 of the Hyderabad Municipal Corporation Act, 1955 on 12.11.2011 to the petitioner; but he filed the suit without impleading them and suppressing from the Court not only about the notice under Section 685 of the Act but also an earlier notice dt.16.05.2011 under Section 452 of the Act. They contended that they, being neighbours and same locality people, have every right to object to such illegal construction and therefore they should be impleaded.

6. Counter affidavit was filed by the petitioner opposing the impleadment of the respondents 1 and 2 in the suit and in the I.A. contending that they have already filed a comprehensive suit O.S.No.875 of 2011 for the relief of mandatory injunction and for other reliefs, and having done so, they are not entitled to get impleaded in this suit. He denied that there was any encroachment of any public road and contended that the respondents 1 and 2 are not affected persons since they are not even his neighbours.

7. By common order dt.05.10.2012, the Court below allowed both the applications.

8. It observed that the 3rd respondent had filed written statement in the suit taking the plea that the petitioner had deviated the sanctioned plan by constructing Ground + three floors instead of permitted Ground + 1st floor(commercial), that the respondents had complained against the same and had also approached the Court by filing O.S.No.875 of 2011 impleading the petitioner and the 3rd respondent. It also observed that the subject matter of O.S.No.1302 of 2011 and O.S.No.875 of 2011 is one and the same; while O.S.No.875 of 2011

was filed on 11.04.2011, the present suit was filed on 03.06.2011; and that the proceedings in O.S.No.875 of 2011 had been got stayed at the instance of the petitioner in CRP.No.3335 of 2011. It observed that though the respondents 1 and 2 are not neighbours, they have every right to agitate against the illegal construction allegedly being made by the petitioner, contrary to the Building Bye-laws.

9. Challenging the said common order, these two Revisions are filed.

10. Heard Sri Venkatesh Deshpande, Counsel for the petitioner and Sri G.Venkateswara Rao, Counsel for respondents 1 and 2, in both the Revisions.

11. Counsel for the petitioner contended that the Court below had erred in impleading respondents 1 and 2 as parties in O.S.No.1302 of 2011 filed by his client against the 3rd respondent, even though respondents 1 and 2 are not his neighbours and they are in no way affected by the construction being carried on by the petitioner. He further contended that since a comprehensive suit O.S.No.875 of 2011 had already been filed by respondents 1 and 2 against him, they ought not to have been impleaded in O.S.No.1302 of 2011 and also in I.A.No.301 of 2011 therein. In support of his contention he relied upon a decision in ***Bheri Nageswara Rao v. Mavuri Veera Venkata Satyanarayana and others***^[1]

12. Counsel for the respondents 1 and 2 however refuted the above contentions and supported the order passed by the Court below. He pointed out that before the Court below, the respondents 1 and 2 had relied on several decisions of the Apex Court and of this Court in support of their plea that persons in the locality, where constructions are being made illegally, have a right to complain of breach of the Building Rules and Regulations against such unauthorized

constructions as a citizen, since such illegal constructions are in the nature of public nuisance. He therefore contended that there is no error of jurisdiction in the order passed by the Court below impleading the respondents 1 and 2.

13. I have noted the submissions of both sides.

14. In ***K. Ramadas Shenoy v/s. The Chief Officer, Town Municipal Council, Udipi & Ors***^[2] the Supreme Court observed that all the residents of the area have a personal interest in the performance of statutory duty by public bodies such as Municipal Councils, when the special and substantial interest of the residents of the area is injured by an illegal construction.

15. Similar view has been expressed by the Supreme Court in ***Bangalore Medical Trust v. B.S.Muddappa and others***^[3] and by this Court in ***Sheriff Iqbal Hussain Ahmed v. Govt. of A.P. and others***^[4] and ***Yaseen Khatoon v. Commissioner, Municipal Corporation of Hyderabad and another***^[5].

16. In ***Bheri Nageswara Rao v. Mavuri Veera Venkata Satyanarayana and others***^[6] cited by the counsel for the petitioner, a suit was filed seeking a mining lease to exploit schedule property for extracting granite slabs and a third party sought to be impleaded therein alleging that he is entitled to 1/5 share in the property and that he had also filed a comprehensive suit as regards his title to the property, which is pending adjudication. The trial Court dismissed the said application, which was confirmed by this Court observing that the suit in question did not relate to property and since only declaratory relief is sought to direct Mines and Geology Department to grant lease for extraction of mines, a third party is not entitled to be impleaded therein.

17. In my considered view, the principle laid down in **Bheri Nageswara Rao's** case(6 supra) has no application to the present case, since the respondents 2 and 3 are persons affected by the alleged illegal construction being made by petitioner, having regard to the decisions rendered in **Bangalore Medical Trust's** case (3 supra), **Sheriff Iqbal Hussain Ahmed's** case (4 supra) and **Yaseen Khatoon's** case(5 supra).

18. Therefore, I am of the opinion that the Court below was absolutely correct in impleading respondents 1 and 2 both in I.A. as well as in the suit, since their right as a citizen to complain against the constructions being made contrary to the Building Bye-laws cannot be allowed to be defeated on the mere ground that they are not the immediate neighbours of the petitioner.

19. I see no merits in both the Civil Revision Petitions and they are accordingly dismissed. There shall be no order as to costs.

20. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

07th September, 2015.
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[1] 2005(3) ALT 574

[2] AIR 1974 SC 2177

[3] AIR 1991 SC 1902

[4] 2001(5) ALD 176

[5] 2005(4) ALT 252

[6] 2005(3) ALT 574