

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.19954 & 23895 of 2012

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COMMON ORDER:

Writ Petition No.19954 of 2012 is filed to declare the proceedings dated 31.12.2010 of the 1st respondent, and the consequential proceedings dated 27.06.2012 of the 2nd respondent, as illegal, and to issue mandamus to the 1st respondent to re-consider the application of the petitioner, dated 15.03.2008.

Writ Petition No.23895 of 2012 is filed challenging the inaction of the 1st respondent against the illegal constructions made by the 5th respondent. The petitioner in W.P.23895 of 2012 is impleaded as 3rd respondent in W.P.No.19954 of 2012, and the 5th respondent in W.P.No.23895 of 2012 is the petitioner in W.P.No.19954 of 2012.

The subject matter of these writ petitions being one and same, they are heard together and disposed of by this Common order. The facts as contained in Writ Petition 19954 of 2012 are taken for discussion, for convenience.

The petitioner in Writ Petition 19954 of 2012 states that she purchased the land admeasuring 142 sq.yards in R.S.No.539/1 of Gollapudi Village by way of a registered sale deed Document No.6469/84. She was granted permission for construction of house consisting of ground, first and second floors, by the 2nd respondent vide proceedings dated 21.07.2005. The construction was completed and the property was also assessed to property tax. While so, basing on the complaint made by one Abdul Sayeed/impleaded 3rd respondent, the 2nd respondent inspected the petitioner's premises and found that the constructions are in accordance with the sanctioned plan and accordingly, sent replies dated 25.04.2006 and 29.04.2006 to Abdul Sayeed. When Abdul Sayeed filed W.P.No.9535 of 2006 for taking action on the representations alleged to have been submitted by him, the 3rd respondent in the said writ petition filed counter stating that constructions made by the petitioner herein are according

to the approved plan and that there are no unauthorised constructions. Later the said writ petition was dismissed for non-prosecution by order dated 24.02.2011. Abdul Sayeed filed one more writ petition viz., W.P.No.9978 of 2008 seeking a direction to remove the illegal construction alleged to have been made by the petitioner. But the said writ petition was also dismissed vide order dated 24.03.2011. The 3rd respondent filed O.S.No.1477 of 2008 against the petitioner on the file of IV Additional Junior Civil Judge for grant of decree in his favour for possession of part of the property admeasuring an extent of 8 sq.yards in the property bearing D.No.8-15/1, Gollapudi, Krishna District, but the same dismissed vide order dated 30.11.2010 with costs. Meanwhile, the petitioner constructed a small water tank and made an application on 15.03.2008 under the provisions of Building Penalisation Scheme along with the prescribed fee requesting the 1st respondent to regularise the said construction. Having received the said application the 1st respondent vide proceedings dated 04.10.2010 directed the petitioner to furnish the certified copy of the judgment in O.S.No.1477 of 2008. But without waiting for reply, the 1st respondent issued proceedings dated 21.12.2010 rejecting the application of the petitioner stating the subject property is under litigation. Thereafter, the petitioner got issued a legal notice dated 11.03.2011 to the 1st respondent bringing to his notice about the disposal of the suit filed by the 3rd respondent in favour of the petitioner. The petitioner also issued a notice on 18.11.2011 besides submitting a representation on 03.05.2012. Having received the said notice and representation, no action was taken by the 1st respondent. Later when the respondents tried to demolish the constructions made by the petitioner, she filed O.S.No.1063 of 2007 but she has withdrawn the suit as the respondent assured to consider her application for regularisation of constructions made. While the matter stood thus, the present impugned notice dated 27.06.2012 was issued asking the petitioner to remove the unauthorised constructions within a period of five days. Aggrieved by the same, the present writ petition is filed.

The 1st respondent filed counter admitting that the petitioner obtained permission for construction of ground, first and second floor on her land. It is also stated that the petitioner herself admitted that she constructed the 3rd floor un-authorisedly and made an application under Building Penalisation Scheme,

under G.O.Ms.No.901 dated 31.12.2007, on 15.03.2008 by duly paying an amount of Rs.4,764/-. It is further stated that 1st respondent while considering the petitioner's application, addressed a letter dated 04.10.2010 asking the petitioner to submit a copy of the judgment in O.S.No.1477 of 2008. As the petitioner failed to furnish required information, her BPS application came to be rejected vide proceedings dated 31.12.2010. The petitioner submitted a copy of the judgment and decree in O.S.No.1477 of 2008 on 27.01.2011 subsequent to the rejection of her BPS application.

The 2nd respondent also filed a counter, reiterating the averments in the counter filed by the 1st respondent. It is further stated in the counter that basing on the complaint of Abdul Sayeed/3rd respondent, the Panchayat Secretary personally visited the petitioner's premises and found that the petitioner has constructed a room with R.C.C. and veranda with A.C. Sheet roof above the constructed building. Thereafter, he issued a notice on 11.07.2011 asking the petitioner to remove the unauthorised constructions. Thereafter, the petitioner made an application under BPS scheme seeking regularisation of the unauthorised construction and the said application was rejected by the 1st respondent directing the 2nd respondent to take necessary action for removal of the unauthorised constructions made by the petitioner.

The respondents in W.P.No.23895 of 2012 filed counter stating that since the 5th respondent in W.P.No.23895 of 2012, who is the petitioner in W.P.No.19954 of 2012, obtained interim order from this Court, no further action could be taken.

Heard learned counsel for the petitioner and Smt K.Manideepika, learned Standing counsel for VGTM UDA, and perused the record.

In this case, it is to be seen that the petitioner herself made an application on 15.03.2008 for regularisation of unauthorised construction of 3rd floor. Admittedly, the petitioner was granted permission for construction of ground, 1st and 2nd floors. When the petitioner made an application for regularisation, the 1st respondent issued proceedings dated 04.10.2010 asking the petitioner to produce a copy of judgment and decree in O.S.No.1477 of 2008

and the petitioner produced the same which was also admitted by the 1st respondent in the counter. But it is stated that the same was produced after rejecting of her BPS application. The BPS application of the petitioner was rejected on the ground that there are legal disputes regarding ownership of the subject premises. In Writ Petition 19954 of 2012, it is clearly stated that by the time the impugned rejection proceedings were passed, a civil suit in O.S.No.1477 of 2008 filed by the 3rd respondent in W.P.No.19954 of 2012 and writ petitioner in W.P.No.23895 of 2012 came to be dismissed. In fact it is admitted that a copy of the judgment and decree in O.S.No.1477 of 2008 was produced before the 1st respondent. Since the only ground for rejection of regularisation application is that the subject premises is in litigation, and not for any other reasons. Now the judgment and decree of civil suit is filed before the 1st respondent, it is open for the 1st respondent to consider the same and pass appropriate orders.

In view of above facts and circumstances, the impugned rejection order dated 31.12.2010 is set aside and the 1st respondent is directed to dispose of representation of the petitioner for regularisation of structure after issuing notice to the impleaded 3rd respondent in W.P.No.19954/petitioner in W.P.No.23895 of 2012. Till then, *status quo* obtaining as on today shall be maintained by both the parties. Thereafter, it is open for the competent authority to take appropriate action in accordance with law.

Accordingly, the writ petitions are disposed of. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY, J

Date: 12.10.2015

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