

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.3314 of 2012

ORDER:

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This writ petition is filed seeking the following relief/s:

'...to issue an order or direction more particularly one in the nature of writ of mandamus or any other appropriate writ order or direction declaring the action of the respondent no.1 in not taking any action against respondents no.2 and 3 illegal construction which is made and being made by them in premises Municipal numbers 5-3-226 and 5-3-227 situated in Shiva Veedhi, Vanjariwada, Jagtial town, Jagtial Mandal, Karimnagar District, without taking any permission from the respondent no.1, without leaving any set backs and encroaching the beams into the residential house of the petitioner and even though the petitioner submitted a detailed complaint on 28.1.2012 and upon which even though the respondent no.1 after inspecting the spot issued a notice under section 228(3) of the A.P. Municipalities Act, is nothing but arbitrary, illegal, null and void and violative of the provisions of the A.P. Municipalities Act and also violative of Articles 14, 19 and 21 of the Constitution of India. Consequently direct the respondent no.1 to take action and remove the illegal construction which is made and being made by the respondents no.2 and 3 in premises Municipal numbers 5-3-226 and 5-3-227 situated in Shiva Veedhi, Vajariwada, Jagtial town, Jagtial Mandal, Karimnagar District, considering the representation filed by the petitioner dated. 28-1-2012 and notice issued dated 24-12-2011 and to pass such other order....'

[Reproduced verbatim]

2. The 1st respondent Municipality had filed a counter affidavit. Though no counter is filed by the unofficial respondents 2 and 3, their learned counsel has orally resisted the writ petition.
3. I have heard the submissions of the learned counsel for the writ petitioner, the learned Standing Counsel appearing for the 1st respondent Municipality and the learned counsel appearing for the respondents 2 and 3. I have perused the material record.
4. The grievance of the writ petitioner is this: 'The 1st respondent did not take any action against the respondents 2 and 3 inspite of the fact that they had made illegal constructions in the premises bearing Municipal no.5-3-226 and 5-3-227 situate at Shiva Veedhi of Jagtial town without taking any permission from the 1st respondent and without leaving any set backs and by extending their beams into the residential house property of the petitioner. In spite of a spot inspection by the concerned and a notice and a further order dated 24.12.2011 under Section 228(3) of the A.P. Municipalities Act, 1965 ('the Act', for brevity) directing the respondents 2 and 3 to remove the illegal constructions that are being made by them, they did not comply with the said orders. Even then, the 1st respondent did not take any action. Therefore, the petitioner had made a representation dated 28.01.2012 to the 1st respondent requesting to take action pursuant to the earlier orders of the 1st respondent and remove the illegal constructions. But, the 1st respondent did not take any action. Therefore, the petitioner is constrained to file the writ petition.'
5. The case of the 1st respondent Municipality is that the 1st respondent had issued a provisional order dated 08.02.2012 under Section 228(1) of the Act directing the respondents 2 and 3 to stop the constructions immediately and remove the constructions already made and that a show cause notice under Section 228(2) of the Act was also issued as to why the provisional order shall not be confirmed within a week thereafter and that inspite of such notice, the respondents 2 and 3 did not comply with the same and that, therefore, a confirmation order dated 24.12.2012 was passed and that when the 1st respondent is about to initiate action, the 1st respondent had come to know that the respondents 2 and 3 had instituted a suit OS.No.16 of 2012 on the file of the Court of the learned Principal Junior Civil Judge at Jagtial and had obtained an interim order restraining the 1st respondent from taking any action for demolition of the constructions made by the respondents 2 and 3 and that, therefore, the 1st respondent could not proceed further in the matter and that soon after the injunction order is vacated by the said Court, the 1st respondent is prepared to take appropriate action according to the procedure established by law.
6. The learned counsel for the writ petitioner and the learned Standing Counsel for the 1st respondent made submissions in line with the respective pleadings.
7. The learned counsel for the unofficial respondents 2 and 3 while bringing to the notice of this Court the orders dated 29.03.2011 passed in WP.No.31512 of 2010 would submit that the 3rd respondent had filed the above writ petition against the 1st respondent Municipality and others and that the said writ petition was disposed of giving liberty to the said writ petitioner to approach a civil Court and that in the said circumstances, the civil suit was instituted and that, therefore, a competent civil Court is having sesin over the matter and hence, the writ petitioner may be directed to approach the civil Court and contest the

civil suit. He, therefore, prayed for dismissal of the writ petition.

8. In reply, the learned counsel for the writ petitioner would submit that the writ petition may be disposed of directing the 1st respondent to take appropriate action against the constructions made by the respondents 2 and 3 as undertaken in the counter affidavit of the 1st respondent subject to the result of the interlocutory application in the said civil suit.

9. The plaint copy in the civil suit is not made available to this Court. However, as per the submissions of the learned counsel for the writ petitioner, the writ petitioner is not a party to the said suit. Be that as it may. In view of the pendency of the civil suit and as a competent civil Court is having sesin over the matter, this Court is of the well considered view that the writ petition can be disposed of with appropriate directions, which would sub serve the ends of justice.

10. Accordingly, the Writ Petition is disposed of directing the 1st respondent Municipality, to await the final disposal of the pending civil suit OS.No.16 of 2012 on the file of the Court of the learned Principal Junior Civil Judge, Jagtial, and take appropriate and necessary action in the matter in strict accordance with the procedure established by law, subject, however, to the decision in the said suit, nevertheless, after giving an opportunity of hearing to the writ petitioner as well as the respondents 2 and 3. It is needless to state that the parties to the civil suit are at liberty to request the civil Court to dispose of the interlocutory application and also the suit in accordance with the procedure established by law and as expeditiously as possible. No costs.

Miscellaneous petitions, pending if any, in the writ petition shall stand closed.

M. SEETHARAMA MURTI, J

22.12.2015
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