

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

REVIEW W.A.M.P.NO.1403 OF 2015

IN W.A. NO.102 OF 2015 AND

W.A. NO.413 OF 2015

DATED 09th OCTOBER, 2015

Review W.A.M.P.No.1403 of 2015

In W.A.No.102 of 2015:

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Between:

Greater Hyderabad Municipal Corporation,
represented by its Commissioner and another

.. Review Petitioners

and

Arul Colony Christian Welfare & Cultural
Association and another

.. Respondents

W.A. No.413 of 2015

Between:

Greater Hyderabad Municipal Corporation,
represented by its Commissioner and another

.. Appellants

and

Arul Colony Christian Welfare & Cultural
Association and another

.. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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REVIEW W.A.M.P.NO.1403 OF 2015

IN W.A. NO.102 OF 2015 AND

W.A. NO.413 OF 2015

COMMON JUDGMENT

(per Hon'ble Sri Justice Sanjay Kumar)

Arul Colony Christian Welfare & Cultural Association, Hyderabad, filed W.P.No.13053 of 2014 assailing the action of the Deputy Commissioner, Greater Hyderabad Municipal Corporation (GHMC), Kapra Circle, Ranga Reddy District, in taking possession of the community hall with two rooms and shed, senior citizen room, welfare association hall, gardener's room, park and other open spaces, along with their maintenance, on 10.11.2011 and the decision dated 15.02.2014 of the GHMC to continue with the said arrangement. A consequential direction was sought to the GHMC to hand over the structures along with the park, play ground and open spaces in Arul colony to the petitioner, to facilitate their maintenance by the petitioner and to direct the Deputy Commissioner, GHMC, Kapra Circle, Ranga Reddy District, to refund to the petitioner the revenue generated by maintenance of the community hall from 10.11.2011 onwards and to get the electricity service restored by paying all the dues, penalties and charges from GHMC funds.

The said writ petition was allowed by a learned Judge of this Court on 20.01.2015 with costs, quantified at Rs.5,000/-. Aggrieved thereby, the Residents Welfare Association of Arul Colony, the third respondent in the writ petition, filed W.A. No.102 of 2015. The said writ appeal was disposed of by a Division Bench of this Court, of which one of us (SK,J) was a member, on 18.02.2015. The operative portion of this order reads as under:

‘We are of the view that the finding of the learned trial Judge *prima facie* is correct. But, without issuing any notice, meaning thereby, without giving a chance of being heard, the order impugned in the writ petition was passed. Hence, we admit the appeal.

However, we do not want to grant any stay of the order of the learned trial Judge. If the 1st respondent-writ petitioner is handed over possession in terms of the order of the learned trial Judge, the writ petitioner shall not use the same contrary to the permission granted by the Municipal Corporation.

After this order was dictated, learned Standing Counsel for the Greater Hyderabad Municipal Corporation submits that as found by the learned trial Judge, no show cause notice was given on the new ground before passing the order impugned in the writ petition and her client is prepared to give a hearing on the new ground.

Learned Counsel for the appellant also agrees to the said submission.

In that view of the matter, we dispose of this appeal taking the same as on day's list in the manner as follows:

The order impugned in the writ petition should be treated to be a fresh show cause notice and the order passed by the Greater Hyderabad Municipal Corporation is kept in abeyance and the writ petitioner would be free to make a representation to the Corporation on the new ground and on receipt of the representation, the Commissioner and/or any other Officer, who may be delegated by the Commissioner, should serve a notice of hearing to the writ petitioner as well as the appellant before us and after hearing them, appropriate order will be passed in accordance with law with reasons. Obviously, the issue will be in relation to the new ground mentioned in the order impugned in the writ petition and not the issue of encroacher, which was taken earlier in the show cause notice. We are told that the possession of the community hall has been taken over by the Corporation. However, after deciding the issue, if it is found that the writ petitioner has not done any infraction of law, the possession will obviously be handed over to the 1st respondent-writ petitioner. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

We dispose of the appeal modifying the order of the learned trial Judge to the extent indicated above.

Consequently, pending miscellaneous petitions, if any, shall also stand dismissed. No costs.'

W.A.M.P.No.1403 of 2015 was filed by the GHMC represented by its Commissioner, Hyderabad, and the Deputy Commissioner, GHMC, Kapra Circle, Ranga Reddy District, seeking review of the above order. Independently, W.A.No.413 of 2015 was also filed by them assailing the order dated 20.01.2015 passed by the learned Single Judge allowing W.P.No.13053 of 2015 with costs.

Facts, to the extent relevant, are as under:

The Hyderabad Archdiocese Social Service Society (HASSS) purchased an extent of Ac.15.00 guntas in Sy.Nos.495, 498 and 499 (part) of Kapra Village. It applied to the Hyderabad Urban Development Authority (HUDA) for sanction of a layout in respect of this land. Sanction was granted *vide* Permit No.810 of 1979 dated 31.10.1979. Thereafter, a final layout was sanctioned by the HUDA on 23.04.1983 subject to certain conditions. Condition No.13 provided that no open space in the layout, earmarked for parks, play ground, community facilities, schools,

etc., should be put to any other use without the prior approval of the HUDA. Under the sanctioned layout, the subject land was demarcated into 136 residential plots leaving three open plots as lung spaces as per the HUDA layout rules. Houses having been constructed in the sanctioned plots, the colony that came into existence was named Arul Colony. The petitioner claims to be a welfare and cultural association formed by the owners of plots in Arul Colony and that HASSS is its parent association.

The layout of the colony was revised by the HUDA on 22.02.1985. Thereafter, HASSS applied to Kapra Municipality in 1989 for permission to construct a community hall in one of the open spaces provided in the layout. This application was forwarded by Kapra Municipality to the HUDA for technical approval. Kapra Municipality informed the HUDA that it had no objection for construction of a community hall in the said open space. A resolution was also passed to that effect by the Municipality on 14.03.1989. The only condition imposed was that the community hall constructed in the said open space should be made available to all and should not be alienated or misused and in the event of such violation, the land along with building was to be taken over by the Municipality. The HUDA informed the Municipality by letter dated 06.06.1989 that it had no objection for utilization of the open space for community purposes, like a community hall, school, library, etc., subject to the condition that the open space in the layout should not be reduced to less than 5%; such community purposes should not be religious purposes or for worship and should be open to all communities. The Municipality was asked to take a decision to give the open space on lease and subject to the above conditions, the HUDA granted technical approval for the building plans. It appears that pursuant to the aforesaid permission and technical approval, certain constructions were made.

Kapra Municipality merged with the GHMC in the year 2007. While so, the Deputy Commissioner, GHMC, Kapra Circle, Ranga Reddy District, issued notice dated 18.07.2011 to the petitioner under Section 402 of the Greater Hyderabad Municipal Corporation Act, 1955 (for brevity, the Act of 1955), alleging that encroachment had been made in the open spaces earmarked for a park/public purpose in the layout of Arul Colony and the petitioner was directed to hand over the said encroached area within three days to the GHMC. After considering the explanation submitted by the petitioner on 21.07.2011, the Deputy Commissioner, GHMC, Kapra Circular, Ranga Reddy District, by order dated 25.07.2011, directed

the petitioner to hand over the open spaces with structures to the GHMC. Questioning the same, the petitioner filed W.P.No.21886 of 2011 before this Court. The Interim Order passed therein was challenged by the GHMC in W.A.No.742 of 2011. At that stage, the Residents Welfare Association of Arul Colony, the third respondent in W.P.No.13053 of 2014, being a rival to the petitioner, got itself impleaded in the appeal. The writ appeal was disposed of on 27.11.2013 by the following order.

‘We are of the view that in a matter of this nature, the writ court should not have entertained the grievance of the petitioner at this stage. It is not the case that the Municipal Corporation has no jurisdiction to issue such notice. If there is improper invocation of the provision of law, that can be pointed out by the writ petitioner before the authorities concerned. We, therefore, set aside the impugned judgment and order. We direct the Municipal Corporation to give notice to all the concerned and conduct hearing. The writ petitioner would be free to produce all the material documents before the appropriate official of the Corporation who will consider all the contentions and decide the matter without being influenced by the decision of the learned Trial Judge. The order of sealing is restored. However, after considering all aspects of the matter, if the Corporation found that there has been no illegality in making construction, appropriate order would be passed with reasons. In that case, the order of desealing shall also be passed immediately thereafter. In the event there be any illegality, appropriate legal measures shall be taken. The entire exercise shall be completed within a period of six weeks from the date of communication of this order. We make it clear that we have not decided anything on merit of the case nor the findings of the learned Single Judge will come in the way of rendering the decision by the appropriate authority.’

Pursuant to the aforestated order, the petitioner and the third respondent filed written submissions before the Commissioner of the GHMC. Thereupon, the proceedings dated 15.02.2014 came to be passed by the Commissioner, GHMC, wherein he took the view that the community hall in question was not being used for the purpose for which it was constructed. The claims of the petitioner as well as the third respondent were rejected and the community hall, senior citizen's room, welfare association hall, gardener's room and park along with appurtenant land were stated to vest with the GHMC, under its maintenance and control.

These proceedings were challenged in W.P.No.13053 of 2014. The learned single Judge, by the order dated 20.01.2015, took note of the fact that the notice

issued under Section 402 of the Act of 1955 was untenable as the said provision had no application to the facts of the case. Further, as the ground taken by the GHMC at that point of time was only that encroachment had been made in the open spaces, the learned Judge opined that it was not open to the GHMC to enlarge the scope of the enquiry thereafter and hold that the community hall was not being used for the purpose for which it was built. The learned Judge therefore held that the impugned proceedings were patently arbitrary and amounted to expropriation of the property of the petitioner/ HASSS and reflected gross misuse of power by the GHMC. Adverting to the approval granted by the HUDA for construction of a community hall by HASSS in one of the open spaces, the learned Judge concluded that it could not be contended that HASSS or the petitioner had unauthorizedly converted such open space and constructed a community hall therein illegally. The learned Judge refused to enter into the controversy between the petitioner and the third respondent and left it open to the third respondent to approach a competent civil Court. The learned Judge therefore concluded that as the order passed by the Division Bench in W.A.No.742 of 2011 only enabled the GHMC to determine whether there was any illegality in the construction of the community hall by HASSS, enlarging of such enquiry and the ultimate finding that the community hall was not being used for the purpose that it was built was improper. As possession of the community hall etc. was taken over by the GHMC, a direction was issued to remove the seals and hand over possession to the petitioner. A further direction was given to get the electricity service restored to the premises by paying all the dues, penalty and charges from GHMC funds. Liberty was given to the petitioner to approach the civil Court for recovery of the revenue generated from the use of the premises from 10.11.2011. The impugned proceedings dated 15.02.2014 were accordingly set aside. Costs of Rs.5,000/- were imposed upon the GHMC.

On 18.02.2015, when the Division Bench disposed of W.A. No.102 of 2015 arising out of the above order of the learned single Judge, Smt. A. Deepthi, learned standing counsel for the GHMC, stated that as no show cause notice was given to the petitioner on the new ground viz., as to the failure to use the community hall for the purpose that it was constructed, the GHMC was prepared to give the petitioner a hearing in that regard. The learned counsel for the petitioner was also agreeable to the said proposal. It was in the light of this offer and acceptance that the writ appeal was disposed of in terms of the order extracted *supra*. However, the enquiry to be undertaken was restricted only to the new ground mentioned in the order impugned

in the writ petition and not the issue of encroachment, which was raised earlier. It is in the light of this restriction that the GHMC filed W.A.M.P.No.1403 of 2015 in W.A. No.102 of 2015 seeking review of the said order. Independently, the GHMC also filed W.A.No.413 of 2015 against the order of the learned single Judge.

It is indeed distressing to note the casual and lackadaisical manner in which the GHMC administers its affairs. W.A. No.102 of 2015 was disposed of as aforestated upon the offer made by the GHMC itself. However, it is now stated that such an enquiry would be wholly inadequate as its scope is restricted in terms of the order. Smt. A. Deepthi, learned standing counsel for the GHMC, would assert that certain important facts were not brought to the notice of either the learned single Judge or the Division Bench which disposed of W.A. No.102 of 2015. She pointed out that HASSS had sought permission and sanction to undertake construction of a community hall in only one out of the three open spaces in the layout and contended that presently, two of the open spaces were constructed upon, contrary to the permission granted. She stated that adequate safeguards were provided in the law, existing at that point of time, which sought to prevent such misuse of open spaces in a layout. She argued that as this aspect of the matter was never brought out earlier, the GHMC would necessarily have to examine the nature and location of all the constructions made. She asserted that as regards the open space which is covered by the HUDA sanction also, the community hall therein was not being utilized for the purpose for which it was constructed and the use thereof had taken on a religious hue which is contrary to the very intendment of sanctioning such a community hall.

Given the aforestated submissions of Smt. A. Deepthi, learned standing counsel for the GHMC, and having heard Sri Vedula Venkata Ramana, learned senior counsel appearing on behalf of Sri V. Ramachandra Goud, learned counsel for the first respondent/writ petitioner in W.A.M.P.No.1403 of 2015 in W.A.No.102 of 2015, and Smt. B. Niraja Sudhakar Reddy, learned counsel for the second respondent/third respondent in the writ petition, we grant the application for review in terms of Order 47 Rule 4(2) CPC and deem it appropriate to take up the case for hearing at this stage.

As pointed out in the order dated 27.11.2013 passed in W.A.No.742 of 2011, it is not as if the GHMC has no power to take suitable action in matters of this nature. Haphazard invocation of legal provisions is however the result of improper

application of mind by the GHMC authorities and such carelessness is further compounded by the *ad hoc* approach adopted by them in not dealing with issues comprehensively. This is amply demonstrated by the case on hand. In the first instance, the GHMC alleged encroachment of the open space, completely overlooking the fact that Kapra Municipality and the HUDA had permitted use of one open space for construction of a community hall. However, after the first round of litigation before this Court, the GHMC enlarged the scope of enquiry and went on to the aspect of use of the community hall and took action on the ground that the said hall was not being utilized for the purpose for which it was intended.

Notwithstanding the lapses on the part of the GHMC in this regard, this Court is more concerned with the larger public interest involved in protecting the open spaces in a layout which houses as many as 136 families. This Court has time and again emphasized the need to safeguard such breathing spaces in crowded residential colonies. The GHMC, being the authority entrusted with the obligation of conserving these lung spaces, must necessarily discharge its duty with utmost perseverance. This is however found to be lacking in most such instances and the case on hand is one more example. It would be advisable that the GHMC deal with such issues in their entirety in one go, by applying its mind to all the attending facts and circumstances. Raising one ground after another successively is not the proper approach to be adopted.

We are therefore of the opinion that, despite the petitioner having been subjected to two rounds of litigation already, this is a fit case to permit the GHMC to undertake a thorough enquiry into all aspects relating to the use of open spaces in this colony, duly giving an opportunity of hearing to all the parties concerned, after putting them on notice as to all the aspects which are to be subjected to enquiry. All issues are left open for decision on ground realities and in accordance with law. The GHMC shall thereafter take action in the matter as per rules in relation to each open space in the colony. As it is stated that possession of the subject structures and open spaces is still with the GHMC, the same arrangement shall continue pending the enquiry to be undertaken by the GHMC pursuant to this order. The GHMC is directed to complete the exercise expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order. The order passed in W.P.No.13053 of 2014 is therefore set aside. The order in W.A.No.102 of 2015 shall stand modified to the extent indicated above.

W.A.M.P.No.1403 of 2015 in W.A.No.102 of 2015 and W.A.No.413 of 2015 are accordingly allowed. Pending miscellaneous petitions shall stand closed. No order as to costs.

SANJAY KUMAR, J

U. DURGA PRASAD RAO, J

09TH OCTOBER, 2015

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