

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.27422 OF 2012

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the respondent in returning the plan for building construction dated 13.03.2012 and issuing notice under Section 359 of the A.P.Municipalities Act, 1965 on 24.08.2012, 27.08.2012 and 28.08.2012, threatening demolition of residential house of the petitioner situated in T.S.No.2263, located at D.No.9-1-163, without considering the reply submitted by the petitioner on 27.08.2012, as illegal and arbitrary and for a consequential direction to the respondent not to demolish the petitioners' residential house.

The case of the petitioners is that they are the owners of property situated in T.S.No.2263, located at D.No.9-1-163, Narasaraopet, having purchased the same through registered sale deed vide document No.22514/2011, dated 26.12.2011. After purchase, the petitioner filed an application for approval of plan for building construction along with the documents on 29.02.2012, before the respondent-Municipality and the same was returned vide endorsement dated 13.03.2012 stating that the plan was not approved for commercial construction on the ground that the property was meant for public purpose as per the master plan. Having received the same, the petitioner submitted a representation dated 16.03.2012 to the respondent stating that the Civil Court in OS.No.458 of 2002 was pleased to grant injunction against the respondent observing that the subject property is a private property and it belongs to petitioners' vendor's vendor. While so, the respondent again issued impugned notices to the

petitioners on 24.08.2012, 25.08.2012 and 27.08.2012. Having received the said notices, the petitioners sent a reply to the respondent on 28.08.2012 by reiterating all the facts stated in the earlier representation dated 16.03.2012. But, when the respondent, without considering the same, is trying to demolish the property, the petitioner filed the present writ petition.

The respondent-Municipality filed counter affidavit stating that the land claimed by the petitioner falls in T.S.No.2265 and 2266, but not in T.S.No.2263; that as per survey records the land in Sy.No.2265 was recognized as municipal Bus stand and the land in Sy.No.2266 was recognized as MPDO's office and that after abandoning the municipal bus stand the respondent municipality proposed to construct a canteen on the site in Sy.No.2265 and leased out the same for coffee hotel to one P.Purnachandra Reddy, and the tenant while running a canteen constructed three rooms in the said site with GI sheets for running the canteen and as such the entire land in T.S.No.2265 relates to the municipality. It is also stated that the respondent authorities issued door No.9-1-163 for assessment of tax for the sheds constructed. It is stated that the said Purnachandra Reddy gifted the said land admeasuring 44.4 Sq.Ys. in T.S.No.2265 to his daughter Lavanya Reddy on 04.03.1999, by mentioning false survey number, though he was not the owner of the said property. Thereafter, Lavanya Reddy made an agreement of sale-cum-GPA for the land in D.No.9-1-163, admeasuring 58.67 sq.ys, equivalent to 49.04 sq. mtrs. in favour of one Lagadapati Srinivasa Rao and registered the same vide document No.10126/2009. In this document there is a site plan showing the survey number as T.S.No.2263 and D.No.9-1-163, but there were no boundaries

mentioned in the plan. Again the GPA holder L.Srinivasa Rao sold the said property by mentioning the measurement as 58.67 Sq.Ys. in T.S.No.2263 with D.No.9-1-163 to the petitioners. Initially, Purnachandra Reddy indicated measurement of the land as 44.4 Sq.Ys. afterwards the measurement indicated in subsequent GPA/Sale deed as 58.67 Sq.Ys. It is nothing but grabbing of public/Government property. It is further stated that the area of Narasaraopet municipality was divided into several zones such as residential areas, commercial areas, industrial areas and public use areas showing with different markings in the master plan. It is also stated that the petitioners submitted an application for construction of commercial building (ground plus first floor) together with plan etc. in the subject land admeasuring 58.67 sq.ys. situated in T.S.No.2263 of Narasaraopet Municipality. On receipt of application the respondent municipality verified the master plan and other records available with office and informed the petitioners with an endorsement vide B.A.No.73/2012/G1, dated 13.03.2012 that the application for construction of commercial building is not permissible as per the master plan since the subject site is meant for public usage. Thereafter, the petitioners issued a notice dated 24.04.2012 through their counsel, stating grant of injunction in their favour. It is also stated that though, the petitioners got permanent injunction decree and judgment against the respondent municipality in OS.No.458/2002, they cannot use the said land other than meant for usage as per the master plan. Therefore, the petitioners were advised to submit proposals for conversion of land with respect to usage. Instead of submitting the application for conversion of usage, the petitioners are constructing the building high handedly without obtaining any valid permission and that the respondent issued notices from time

to time to the petitioners by mentioning the rule position under Section 359, 360 and 361 of the A.P.Municipalities Act, 1965. Simultaneously, a police complaint was also lodged with the police authorities vide letter dated 24.08.2012, 27.08.2012. On receipt of said notices the petitioners made a representation dated 25.08.2012 stating that the notices are illegal and unlawful. On receipt of the above representation from the petitioner another reply notice vide B.A.No.73/2012/G1, dated 27.08.2012 with speaking order was issued asking the petitioners not to make any further construction and to remove the construction that were started in the site of TS.No.2265 and 2266. Finally, the respondent sought for dismissal of the writ petition.

The petitioners filed reply affidavit reiterating the findings given by the Court below in OS.No.458 of 2012 and also denied the fact that the petitioners have acted in violation of the orders passed by this Court on 03.09.2012 and finally sought for allowing of writ petition.

Learned counsel for the petitioners submits that they have resubmitted application for building permission on 16.03.2012, and as no orders were passed on the same, the respondents addressed a letter dated 16.08.2012 intimating the respondents that they are proceeding with the construction under deemed provision i.e. Section 212 of the A.P.Municipalities Act, 1965. He also submits that only after completion of 70% construction, the petitioners received notice from the respondent wherein the representation dated 16.08.2012 made by the petitioners was refused. He also submits that the petitioners succeeded in the injunction suit in OS.No.458 of 2002 which attained finality and the respondent-municipality has filed OS.No.33 of 2013 for recovery of

possession and declaration of title and the same is pending and that as on today petitioners are in possession, as such they are entitled for building permission subject to result in the suit filed by the respondent municipality. He also submits that the respondent municipality cannot take land into their hands and evict the petitioners by demolishing the existing structures which are constructed by virtue of deemed provisions as envisaged under Section 212 of the A.P.Municipalities Act, 1965.

On the other hand Sri Nimmagadda Venkateswarlu, learned Standing Counsel for the respondent submits that the land in which the petitioners applied for building permission is meant for public utility purpose as per the master plan, as such, petitioners cannot make commercial construction. He also submits that the suit filed by the municipality in OS.No.33/2012, is pending consideration and that until it is cleared no permission can be granted. He also submits that the Civil Court granted injunction in respect of land admeasuring 44.4 Sq.ys. in Sy.No.2263, Narasaraopet and the building permission cannot be granted in Sy.No.2265.

In this case it is to be seen that admittedly, injunction in OS.No.458 of 2012 against the respondent municipality is in operation and the same attained finality and the suit filed by the respondent municipality for declaration of title and recovery of possession in OS.No.33 of 2013 against the petitioners is pending and as on today no interlocutory orders are granted in the same. The Civil Court also gave a specific finding in OS.No.458 of 2012 that the land owned by the petitioners falls in Sy.No.2263 but not in Sy.No.2265 as claimed by the municipality and the said Judgment attained finality. In view of the same, it is not open for the respondent municipality to return or refuse the application of the

petitioner for building permission on the said ground. When once the Civil Court held that the subject land is a private property belongs to the petitioners' vendors and that it does not fall in Sy.No.2265, the respondent cannot contend that it is meant for public utility purpose only. However, as comprehensive suit filed by the respondent municipality for declaration of title and recovery of possession is pending, the respondent municipality should have considered the application of the petitioners by taking into account the injunction orders passed by the Civil Court in OS.No.458/2012. Mere grant of permission does not confer any title on the applicant. It is always subject to the declaration in civil litigation by the competent civil Court.

In view of the above, the impugned order is set aside and the respondent is directed to consider the application of the petitioner in accordance with law. Since it is stated that 70% of construction is over and petitioner has intimated on 16.08.2012 about starting of construction under deemed provisions after waiting for five months, which is also reflected in the impugned proceedings, the respondents shall permit the petitioners to make remaining construction in accordance with rules and regulations. Any permission granted will be subject to further orders in OS.No.33/2013. The petitioners also shall give an undertaking that they will handover the construction made by them in the subject property, in case the respondents succeeds in OS.No.33/2013, without claiming any equity.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending

in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

31.08.2015

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