

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 18094 of 2015

Date : 6-10-2015

Between :

Pelapolu Satyanarayana S/o Peda Mattaiah

R/o Jephthiveerappagudem village, Miryalaguda, Nalgonda

Petitioner

And

The State of Telangana

Rep by its Principal Secretary,

Municipal Admn Department, Saifabad, Hyderabad & others

Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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ORAL ORDER:

Petitioner was granted building permission on 9.4.2015 for construction of a multi-storied building consisting of stilt, ground plus two upper floors. On 15.4.2015, petitioner was issued show cause notice calling for explanation as to why the building permission granted to him should not be cancelled on the ground that petitioner has misrepresented regarding pendency of civil litigation. On 8.6.2015 orders are passed canceling the building permission granted to petitioner. Said order is challenged in this writ petition.

2. Heard learned counsel for petitioner, learned Government Pleader for Municipalities for first respondent, Sri N Praveen Kumar, learned counsel for second respondent and Sri Ganta Rama Rao, learned senior counsel for third respondent.

3. Learned counsel for petitioner contends that the impugned order vitiates on two counts, firstly final order alleges that petitioner was not in possession of 315 sq yards, whereas this was not shown in the show cause notice dated 15.4.2015, is ex-facie illegal; and secondly, it is further contended that order refers to alleged

misrepresentation of civil suits pending on the said property. According to learned counsel for petitioner, petitioner filed O S No. 195 of 2009 on the file of Additional Junior Civil Judge, Miryalaguda seeking injunction against third respondent and decree was granted in his favour. Aggrieved thereby, third respondent filed A S No. 6 of 2015 on the file of the VIII Additional District Judge, Miryalaguda along with I A No. 365 of 2015 seeking to stay the operation of the decree, which application was dismissed by order dated 28.4.2015. Thus, decree passed in O S No. 195 of 2009 operates against third respondent. Therefore, when decree is in favour of petitioner, question of suppression of facts does not arise and on that ground notice and consequential action is ex-facie illegal. A final order cannot go beyond the show cause notice and cannot deal with an issue on which petitioner had no opportunity to rebut. It is ex-facie illegal.

4. Learned senior counsel appearing for third respondent contended that in addition to non disclosure of pending civil suits, petitioner has also made a wrong representation before the municipality regarding total extent of land in his possession, while applying for building permission. Petitioner was owning only an extent of 254.5 sq yards but not 315 sq yards as claimed, when he applied for building permission. He has subsequently acquired remaining extent of land. Thus, there was misrepresentation and played fraud and on that ground the building permission granted to petitioner is liable to be cancelled.

5. The contention of the learned counsel for petitioner that petitioner was not put on notice on the allegation that petitioner was not in possession of land to an extent of 315 sq yards, is not disputed by learned senior counsel

Sri Ganta Rama Rao appearing for third respondent. He is fair in submitting that order is not properly made and is liable to be set aside and matter should be remanded to the Commissioner for fresh consideration.

6. I see force in the contention of the learned counsel for petitioner on the issue of non-disclosure of civil litigation. Urban body is not concerned with civil litigation pending on a property on which a party approaches it seeking building permission. It can only verify, prima facie, existence of title. Civil litigation is relevant only if an injunction is granted in favour of rival claimant. In the instant case, decree is passed in his favour. Thus, non disclosure about civil litigation does not vitiate building permission application. Thus, it cannot said that petitioner has suppressed or made any wrong statement of facts deliberately or willfully which would have vitiated

building permission application process. In O S No. 195 of 2009 decree was passed in his favour and on appeal filed by the third respondent, no injunction was granted in favour of third respondent. Therefore decree operates in favour of petitioner and in that view of the matter, it cannot be said that petitioner has misrepresented the fact and obtained building permission which he could not have obtained. Therefore, I see no justification on the part of the municipality in taking note of that fact and nullifying the building permission granted on that ground.

7. As seen from the show cause notice dated 15.4.2015 and final order dated 8.6.2015, further reasoning assigned for cancellation of the building permission, was not part of the initial show cause notice. Without putting on notice a person against whom action is proposed and calling upon him to explain as to why building permission should not be cancelled, no decision can be taken. Once building permission is granted, right accrues to a person and to take away right accrued, due procedure has to be followed; Person has to be put on notice, must be given due opportunity and appropriate action can be taken only thereafter. Therefore, on that ground also, impugned order is liable to be set aside and it is accordingly set aside.

8. Having regard to the allegation made by the respondent municipality that petitioner did not hold possession of total extent of land on which building permission is obtained, liberty is granted to the respondent municipality to issue notice calling upon the petitioner to explain with reference to total extent of land possessed by him, on which building permission was granted and after affording due opportunity to petitioner and third respondent, appropriate orders as warranted by law may be passed. Till such action is initiated and orders are passed, the municipality shall not interfere in the construction activity by the petitioner. However, petitioner shall not deviate from the building permission granted.

Accordingly, writ petition is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

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P NAVEEN RAO,J

DATE:6.10.2015

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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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