

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

WRIT PETITION Nos.20749 of 2014 and 31782 of 2015

Date:03.12.2015

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WRIT PETITION No.20749 of 2014

Between:

G.Ksheerasagaram,
S/o Jagannadha Rao

..... Petitioner

And:

The Govt of A.P., repled by its
Principal Secretary, Municipal Administration,
Hyderabad and three others.

..... Respondents

Judgment pronounced on 03rd December, 2015

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

- | | |
|---|--------|
| 1. Whether reporters of local newspapers
may be allowed to see the Judgment ? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals ? | Yes/No |
| 3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment ? | Yes/No |

CVNR, J

* HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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! Counsel for the Petitioner: Mr. M.V.Suresh

Counsel for Respondent Nos.1 & 2: GP for Municipal Admn. (AP)

Counsel for Respondent No.3: Mr. Nimmagadda Venkateswarlu

Counsel for Respondent No.4: Mrs. Bobba Vijaya Lakshmi

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> Head Note:

? Cases referred:

NIL

**HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY**

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Counsel for Respondent Nos.1 & 2: GP for Municipal Admn. (AP)

Counsel for Respondent No.3: Mr. Nimmagadda Venkateswarlu

Counsel for Respondent No.4: Mrs. Bobba Vijaya Lakshmi

AND

WRIT PETITION No.31782 of 2015

Between:

The Kovvur Co-Operative Urban
Bank Limited, Kovvur, repled by its
Chief Executive Officer.

..... Petitioner

And:

The Govt of A.P., repled by its
Principal Secretary, Municipal Administration,
Hyderabad and four others.

.....Respondents

Counsel for the Petitioner: Mrs. Bobba Vijaya Lakshmi

Counsel for Respondent Nos.1 to 3: GP for Municipal Admn. (AP)

Counsel for Respondent No.4: Mr. Nimmagadda Venkateswarlu

Counsel for Respondent No.5: Mr. M.V.Suresh

The Court made the following:

COMMON ORDER:

Writ Petition No.20749 of 2014 is filed for a *Mandamus* to declare proceedings in D.Dis.No.2041/2002/R3, dated 28.12.2002, of respondent No.2 as illegal and arbitrary and respondent No.4 therein filed Writ Petition No.31782 of 2015 for a *Mandamus* to declare the action of the Director, Town and Country Planning, Andhra Pradesh, in returning the proposals for construction of first floor by it at Door No.15-4-3, Bapuji Nagar, Kovvur, West Godavari District, as illegal and arbitrary.

For convenience, the parties are referred to as they are arrayed in Writ Petition No.20749 of 2014.

Respondent No.4 has acquired a plot adjacent to the residential building of the petitioner. It has obtained permission from respondent No.2 for construction of a building for running a commercial bank. The petitioner has filed Writ Petition No.3301 of 2003 for a *Mandamus* to declare the grant of permission by respondent No.2 to respondent No.4 to construct a commercial building in a residential area as illegal and untenable. In the counter-affidavit filed by respondent No.2 in the said Writ Petition, it was *inter alia* stated that the Municipal Council, Kovvur, vide its resolution No.216, dated

28.11.2002, resolved to send the proposals to respondent No.2, who was perceived as the competent authority for granting such permission, who, in turn, accorded permission to respondent No.4 to construct a building for running a bank. In order to sustain the building permission, reliance was placed by respondent No.4 on Schedule-II of the Zoning Regulations, Floor Area Ratio and other Building Requirements in Andhra Pradesh (for short 'the Zoning Regulations'), made under the Andhra Pradesh Town Planning Act, 1920, which deals with the "Residential Use Zone". This Court by order, dated 26.11.2009, dismissed the said Writ Petition holding that the competent authority can grant permission to use the buildings in the 'Residential Use Zone' for the purposes, *inter alia*, of running retail shops, local banks with safe deposits vaults, etc., and therefore, permission granted by respondent No.2 in favour of respondent No.4 was in conformity with Schedule-II of the Zoning Regulations. Feeling aggrieved by the said order, the petitioner carried the matter in Writ Appeal No.306 of 2014. A Division Bench of this Court while observing that it does not find any illegality or infirmity in the order under appeal, however, granted liberty to the petitioner to file a fresh Writ Petition challenging permission, dated 28.12.2002, granted by respondent No.2 in favour of respondent No.4. It is in pursuance of this permission, that the petitioner has filed Writ Petition No.20749 of 2014.

The reason for respondent No.4 for filing Writ Petition No.31782 of 2015 is that respondent No.2 has returned its application filed for granting permission to construct first floor over the existing building on the ground of pendency of Writ Petition No.20749 of 2014.

I have heard Mr. M.V.Suresh, learned counsel

for the petitioner, learned Government Pleader for Municipal Administration (Andhra Pradesh) appearing for respondent Nos.1 and 2, Mr. Nimmagadda Venkateswarlu, learned Standing Counsel for respondent No.3 and Mrs. Bobba Vijaya Lakshmi, learned counsel for respondent No.4.

The main ground on which the petitioner has questioned the grant of permission by respondent No.2 to respondent No.4 is lack of his competence to grant such permission.

The learned counsel for the petitioner has relied upon Regulation-5.1 of the Zoning Regulations which deals with the 'Residential Use Zone' and submitted that under Regulation-5.1 (A)(1) thereof, 'Residential Buildings' are defined as dwellings, detached, semi-detached, tenements, flats, boarding homes, bachelor quarters.

Under Clause-B (2) of Regulation-5.1 of the Zoning Regulations, business buildings such as local banks with safe deposit vaults, petrol filling stations without servicing facilities, etc., can be permitted to be used in 'Residential Use Zone' on appeal to the competent authority.

Clause-iii of Schedule-I of the Zoning Regulations defines 'Competent Authority' as the Director of Town and Country Planning, Government of Andhra Pradesh and Clause-(iv) thereof defines 'Director' as the Director of Town and Country Planning, Government of Andhra Pradesh.

Learned counsel for the petitioner submitted that a local bank could be run in 'Residential Use Zone' only upon grant of permission by the competent authority and that the Director of Town and Country Planning, Government of Andhra Pradesh alone being the

competent authority, respondent No.2 has no competence to grant such permission to respondent No.4.

Smt Bobba Vijaya Lakshmi, learned counsel for respondent No.4, has strenuously submitted that the finding rendered by this Court in Writ Petition No.3301 of 2003 has attained finality and that therefore, the petitioner cannot raise this issue by filing a fresh Writ Petition, viz., Writ Petition No.20749 of 2014.

In my opinion, this submission of learned counsel for respondent No.4 cannot be accepted. Even though in Writ Appeal No.306 of 2014, the order passed in Writ Petition No.3301 of 2003 was not set aside and on the contrary, a finding was rendered that there is no illegality or infirmity in the said order, nevertheless, the Division Bench has given liberty to the petitioner to file a fresh Writ Petition in order to question the permission, dated 28.12.2002. It is, therefore, implied, therefrom that the petitioner is permitted to raise all legally permissible pleas including the one which was raised in the previous Writ Petition. Otherwise, the very purpose of giving such liberty to the petitioner would be rendered otiose.

Further, it could be seen that the issue as to whether respondent No.2 was competent for granting permission under Schedule-II of the Zoning Regulations or not was not specifically raised in the previous Writ Petition *i.e.*, Writ Petition No.3301 of 2004. As the Division Bench has given liberty to the petitioner to question the very building permission granted by respondent No.2, he is entitled to raise the said question in the present Writ Petition.

The learned counsel for respondent No.4 fairly has not disputed the submission of the learned counsel

for the petitioner that it is only the Director who is the competent authority to grant permission for running a bank in the Residential Use Zone under Schedule-II of the Zoning Regulations. That being so, the issue should have been referred to the Director, Town and Country Planning, Government of Andhra Pradesh, by the Municipal Council, Kovvur, instead of to respondent No.2, who has no competence to grant such permission. When the statutory enactment confers power on a specified authority, no authority other than such authority can exercise such power unless the power to delegate such power is provided for by the enactment itself and the power is accordingly delegated. The definition of 'Director' under Clause-(iv) of Schedule-I of the Zoning Regulations does not include any other functionary such as respondent No.2. Hence, the permission granted by respondent No.2 in favour of respondent No.4 for construction of a building for running a bank in 'Residential Use Zone' is not in accordance with the provisions of the Zoning Regulations.

Having regard to the conclusion arrived at as above, ordinarily, permission granted by respondent No.2 is liable to be set aside. However, much water has flown after the permission was granted by respondent No.2 and this Court has, indeed, dismissed Writ Petition No.3301 of 2003 filed by the petitioner challenging grant of such permission. In pursuance of the permission, respondent No.4 constructed ground floor and is running a bank therein. Therefore, on the peculiar facts and circumstances of this case, I feel it appropriate that respondent No.2 in Writ Petition No.31782 of 2015, i.e., the Director of Town and Country Planning, Government of Andhra Pradesh, considers the

permission granted by the Regional Deputy Director, Town and Country Planning, Rajahmundry, for running a commercial bank in the 'Residential Use Zone' and take an appropriate decision after notice to the petitioner as well as respondent No.4. After taking a decision and subject thereto, the Director shall dispose of the application filed by respondent No.4 for permission to construct first floor over the existing building. The Director shall complete this exercise within two months from the date of receipt of a copy of this order.

Subject to the above directions, both the Writ Petitions are disposed of.

As a sequel to disposal of the Writ Petitions, W.P.M.P.Nos.26013 of 2014 and 41089 of 2015 are disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

03rd December, 2015

Note:

LR copies to be marked.

B/o

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