

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.39798 of 2015

Date:01.02.2016

Between:

Mohammed Yousuf Mohiuddin
Kamal, S/o Late Mohd. Dastagir

..... Petitioner

And:

The State of Telangana., repled., by its Principal
Secretary, Municipal Admn & Urban
Development Department, Hyderabad
and four others.

.....Respondents

Counsel for the Petitioner: Mr. Ali Farooq

Counsel for Respondent No.1: GP for Panchayat Raj (TS)

Counsel for Respondent Nos.2 to 4: Mr. N.Rishi Kumar
For Mr. N.Ashok Kumar

The Court made the following:

ORDER:

This Writ Petition is filed with the grievance that respondent No.5 has encroached upon a public lane and raised constructions. On 15.12.2015, this Court has passed the following order:

“Mr.N.Rishi Kumar, learned counsel
representing Mr.N.Ashok Kumar, learned

standing counsel for the Greater Hyderabad Municipal Corporation (GHMC), appearing for respondent Nos.2 to 4, submitted that notices under Sections-452(1) and 452(2) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') were issued on 15.05.2015 and a final notice under Section 636 of the Act was issued on 24.08.2015. He has, however, stated that due to the impending elections, the Corporation could not take steps for removal of the unauthorized constructions.

In my opinion, the Corporation cannot bide time in the name of impending elections as its action for removal of the unauthorized constructions must be continuous process and is independent of the events such as elections.

The writ petition is, therefore, adjourned to 29.12.2015 to enable the Corporation to take further action in pursuance of the final notice issued under Section 636 of the Act and filing action taken report by the Zonal Commissioner of GHMC, South Zone, Hyderabad, by the next date of hearing."

In pursuance of the said order, the Zonal Commissioner, South Zone, Greater Hyderabad Municipal Corporation, filed a report, on a perusal of which, this Court has passed an order on 04.01.2016. Thereafter, the learned Standing Counsel for the Greater Hyderabad Municipal Corporation sought to place certain photographs along with some material before this Court on 18.01.2016. However, the case was adjourned to today to enable the officials of the Corporation to file a detailed counter-affidavit along with the photographs. Accordingly, a counter-affidavit is filed by the Assistant City Planner, Circle-V, South Zone, Hyderabad, wherein he has enumerated the action taken for removal of the

illegal constructions made by respondent No.5.

In para-4(f) of the counter-affidavit, he has *inter alia* stated as under:

“It is submitted that respondent Nos.2 to 4’s Corporation has decided to demolish the unauthorized construction on 19.12.2015, accordingly, addressed a letter on 16.12.2015 to the Assistant Commissioner of Police, Charminar with request to provide the police assistance on 19.12.2015 for removal of unauthorized construction at Premises No.20-3-505, situated at Jalal Kuncha, Hyderabad for which the police officials are instructed to postpone the demolition programme, hence, demolition programme has been postponed to 21.12.2015. Accordingly, the officials of respondent Nos.2 to 4’s corporation have went to police station on 21.12.2015 and requested to arrange the police assistance for removal of unauthorized construction, the police officials said that due to eve of festival season (Christmas) the entire police force is in bondobasth, hence, they requested to postpone the demolition programme to 28.12.2015 and accordingly, the demolition programme was again postponed to 28.12.2015 from 21.12.2015. Finally, on 28.12.2015, the officials of respondent Nos.2 to 4’s corporation had attended the demolition programme with the assistance of the police and demolition squad and removed/demolished the unauthorized wall and ventilations projected on the lane and necessary photographs also taken at the site and filed action taken report in the present Writ Petition as directed by this Hon’ble Court. Again on 11.01.2015, the officials of respondent Nos.3 to 4’s corporation had inspected the site and demolished the rest of the unauthorized construction such as Ground floor wall,

Ground Floor slab, 1st Floor Slab and balconies and prepared and filed additional action report in the present WP along with photographs showing the demolition including the photographs of demolished portion of wall as directed by this Hon'ble Court on 04.01.2015 in the present Writ Petition."

Photographs numbering four have also been filed along with the counter-affidavit showing certain demolitions.

The petitioner has filed a reply-affidavit disputing the stand taken by the Assistant City Planner in the counter-affidavit that the entire encroachment has been removed. An effort has been made to show that the width of the lane is 9 ½ feet and not 7 feet and that, still certain encroachments are not removed.

In my opinion, the issues as to what exactly is the width of the lane; whether the encroachments have been completely removed or not; and whether the pipeline laid by the petitioner is under the structure raised by respondent No.5 cannot be adjudicated in this Writ Petition.

After the filing of this Writ Petition, the officials of respondent No.3-Corporation have removed certain portions which are constructed by respondent No.5 unauthorisedly. If the petitioner feels that a part of the constructions made by respondent No.5 unauthorisedly still remains, it is appropriate for him to file a civil suit as, the dispute raised by him needs to be adjudicated by considering the oral and documentary evidence that may be adduced by both the parties.

Accordingly, the Writ Petition is closed with liberty to the petitioner to avail the above-mentioned remedy.

As a sequel to closure of the Writ Petition,

W.P.M.P.No.51362 of 2015 shall stand disposed of as
infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*01st February, 2016
DR*