

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.8286 of 2016

O R D E R:

In this Writ Petition, petitioner has questioned Endorsement dt.20.09.2014 in BA.No.14020/2014/ACP-II of the 2nd respondent returning petitioner's application for grant of permission for making construction of a Ground plus First floor RCC roof residential building at door No.54-3-29 in survey No.42/2B of Maddilapalem Village, Isukathota Area, Division No.10, Visakhapatnam on the ground that a civil suit O.S.No.1094 of 2014, regarding passage on the southern side of the petitioner's property, is pending.

2. Counsel for the petitioner contends that there is no provision in the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') empowering the 2nd respondent to reject the application for construction merely on the ground that a civil suit is pending regarding a passage on the southern side of the property claimed by the petitioner.

3. Sri S.Laxmi Narayana Reddy, Standing Counsel for 2nd respondent is unable to point out any provision in the Act empowering the 2nd respondent to refuse application for permission to make construction on the ground that a civil suit is pending, that too with regard to a passage on the southern side of the petitioner's property.

4. It is not the case of the 2nd respondent that the suit in question is with regard to the property in door No.54-3-29, which is claimed by the petitioner on the basis of sale deeds bearing document Nos.2064 of 2012 dt.24.08.2012 and 4916 of 2004 dt.09.09.2004.

5. In view of this, the Standing Counsel for 2nd respondent states that the 2nd respondent would consider the petitioner's application for approval for making construction in accordance with law, if the petitioner resubmits his application.

6. Sri E.Venkata Reddy, counsel for 3rd respondent has filed a counter affidavit along with material papers stating that his client had filed O.S.No.1094 of 2014 and obtained status quo from the Civil Court on 04.07.2015.

7. A reading of the order dt.04.07.2015 indicates that the suit filed by the 3rd respondent is only with regard to a 12 feet lane leading from east to west of Door No.54-03-34 from the 30 feet road on the west in survey No.42/2B of the said village.

8. Admittedly, the status quo order by the Civil Court is not with regard to the premises bearing door No.54-3-29 claimed by the petitioner, which according to the petitioner is of an extent of 205 sq. yards.

9. Counsel for the 3rd respondent contends that the area covered by both the sale deeds relied upon by the petitioner is only 160 sq. yards and that the petitioner is seeking to include even the area covered by lane, in respect of which civil suit is filed, in the permission sought from the 2nd respondent.

10. Be that as it may, it is not the case of the 3rd respondent that his client is claiming the area covered by two sale deeds. Therefore, there is no way the 3rd respondent can stop the petitioner from making any construction in the area covered by these two sale deeds, *prima facie*.

11. It is the contention of the counsel for the petitioner that the construction permission is not in relation to the land which is being claimed by the 3rd respondent as passage and he has specifically taken the said plea in the notice dt.26.11.2015 given by him to the 2nd respondent.

12. I am of the considered opinion that the 2nd respondent cannot get swayed on account of the pendency of the civil suit O.S.No.1094 of 2014 filed by the 3rd respondent against the petitioner in respect of the passage on the southern side of the petitioner's property and deny permission to the petitioner for making construction in the area claimed by him without perusing the documentary evidence produced by the petitioner before him, since the 2nd respondent has to only

consider the *prima facie* title and has no authority to decide finally the title to the property claimed by the petitioner.

13. Therefore, the Writ Petition is allowed; the impugned order dt.20.09.2014 of the 2nd respondent is set aside; petitioner is directed to resubmit his application for building permission made on 11.08.2014 with supporting documents within a period of two (02) weeks from the date of receipt of a copy of this order; and the 2nd respondent shall consider the same on the basis of the documentary evidence produced by the petitioner without reference to O.S.NO.1094 of 2014 filed by the 3rd respondent. This exercise shall be completed within a period of three (03) weeks from the date of resubmission of application by the petitioner. The 2nd respondent shall also pay costs of Rs.2,000/- to the petitioner.

14. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

22nd August, 2016
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