

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.23582 of 2012, 15613 of 2013, 22303 of 2013 and
C.C.No.625 of 2013

COMMON ORDER:

Since parties to these proceedings are common and common issue arises for consideration in all these cases, they are being disposed of by this common order.

2. W.P.Nos.23582 of 2012 and 22303 of 2013 as well as C.C.No.625 of 2013 are filed by one Dasari Satyanaayana Rao (for short "DSR") against Smt.Tandoori Jyothi (for short "TJ") and her son Sri T.Sree Bhargav, who are the petitioners in W.P.No.15613 of 2013, the Commissioner, Greater Hyderabad Municipal Corporation (for short 'GHMC') and other officials of GHMC.

3. DSR purchased plot No.2 admeasuring 198 sq yds in Sy. No.303 under registered sale deed vide document No.7621/11-11-1999. This plot forms part of ICRISAT Colony, Chandanagar, Ranga Reddy District.

4. TJ is the owner of the neighbouring plot.no.1 of size 175 sq yds on the western side of the plot of DSR. She had acquired the same under a gift deed dt.04-12-2003 being document No.15325/2003 executed by her husband who had purchased the same under sale deed dt.22-12-2000 vide document No.9733/2000.

5. Alleging that TJ encroached an extent of 25 sq yds forming part of his plot, a representation dt.12-06-2012 was made by

DSR to the Deputy Commissioner, GHMC, Circle No.12, Serilingampalli, Hyderabad. He wanted a Mandal Surveyor to be deputed to survey and demarcate his plot and also to remove encroachment by TJ by booking cases of land grabbing and restore his plot to him.

6. TJ alleged that DSR is illegally running a weigh bridge in a residential area by name Sri Venkateswra Weighing Bridge and heavy vehicles are coming to DSR's property effecting the structure erected by her in her property with continuous vibration. She also alleged that DSR approached her and asked her to sell her property to him and since she did not agree to the same, he bore grudge against her and started making allegations against her. According to her, the complaint made by DSR to the GHMC officials is a false complaint and he is influencing the GHMC officials to demolish her property.

7. DSR however contends that the Mandal Surveyor conducted a survey on 08-06-2012 and opined that TJ encroached his land on the western side to an extent of 25 sq yds and built a commercial complex; that the plot is in HUDA layout and as per norms laid down by the Municipal Corporation, the owner should have left at least 25' set back towards the highway and at least 10' on all other sides; that the plot of TJ is only 176 sq yds in which she could have built only two floors, but she managed the local authorities and built cellar + two floors and occupied service road to an extent of 12' leaving no place for parking and she had left no set backs setbacks

of any side. He alleged that she also made encroachments of about 20' on National Highway No.9 and 12' into plot No.2 according to the survey report of the HUDA.

8. W.P.No.23582 of 2012 was filed by DSR against the Government of Andhra Pradesh, Officials of GHMC and TJ challenging the inaction of the official respondents in not taking action against TJ who he alleged has encroached 25 sq yds on the western side of his plot No.2 in Sy. No.303, Icrisat Colony, Chandanagar, Ranga Reddy District and to direct them to remove the encroachment.

9. It is not in dispute that a show cause notice under Section 452 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act, 1955') dt.10-09-2012 was issued by the GHMC officials to TJ and her son asking them to explain why action should not be taken against the unauthorized construction and encroachments mentioned therein.

10. No explanation was submitted to the said show cause notice by TJ and her son and consequently GHMC issued show cause notice under Section 636 of the Act, 1955 on 03-10-2012 asking them to remove the unauthorized constructions mentioned therein within 24 hours.

11. TJ alleged that she did not receive the copy of the said notice dt.10-09-2012 and filed W.P.No.31567 of 2012 before this

Court stating that the order dt.03-10-2012 under Section 636 of the Act could not have been passed without serving notice dt.10-09-2012 u/s.452 of the Act on her.

12. The said Writ Petition was allowed on 14-12-2012 directing TJ and her son to file a response to the notice dt.10.9.2012 under Section 452, a copy of which was delivered to the learned counsel for TJ, and the GHMC authorities were directed to consider the same on or before 31-12-2012 and take appropriate decision in the matter and communicate the same to DSR as well as TJ. It was however directed that till this exercise is completed, the GHMC would not demolish any part of the structure of TJ.

13. Alleging that this order has not been complied with, C.C.No.625 of 2013 was filed by DSR to punish the GHMC officials for willfully disobeying it.

14. TJ gave an explanation dt.28-12-2012 along with report of the Mandal Surveyor stating that she got surveyed her plot and the said Mandal Surveyor in his report stated that there is no encroachment.

15. Thereafter, on 02-04-2013, the Deputy Commissioner, Circle-12, GHMC, West Zone, Serilingampalli, directed all the parties to approach an appropriate forum to settle their dispute on the ground that there is a civil dispute among them. In the said order, he held that TJ had raised a semi-commercial building (i.e., first floor was

converted into Commercial) instead of a residential building, that she excavated a cellar unauthorizedly and made constructions in ground floor and first floor in deviation of the sanctioned plan without maintaining mandatory setbacks she had also encroached neighbouring portion of plot No.2 of DSR.

16. Soon thereafter, the same official passed another order dt.23-05-2013 directing TJ and her son to remove the encroachments from the road margin and also the encroachments from DSR's plot and demolish the unauthorizedly raised cellar and deviations from the sanction plan in ground floor and first floor in three days. He invoked Section 636 of the Act.

17. Alleging that this notice dt.23-05-2013 is illegal, arbitrary and violative of principles of natural justice, and that it is contrary to the order dt.02-04-2013 passed by the same official, TJ filed W.P.No.15613 of 2013.

18. It is pertinent to note that on 14-06-2013 in W.P.M.P.No.18910 of 2013 in W.P.No.15613 of 2013 filed by TJ, this Court had granted an interim direction suspending the order dt.23-05-2013 of the Deputy Commissioner, Circle-12, Serilingampalli pending disposal of the Writ Petition and also directed TJ and her son not to make any further construction.

19. W.V.M.P.No.2371 of 2013 was filed by DSR to vacate the said order.

20. To the extent the order dt.02-04-2013 passed by the Deputy Commissioner, Circle-12, Serilingampalli directed the parties to approach appropriate forum to settle their civil disputes, DSR filed W.P.No.22303 of 2013.

21. On 22-09-2016, Sri K.Ravi Kumar, learned counsel, appeared and argued the matter in part and the matter was adjourned to 23-09-2016.

22. On 23-09-2016, another counsel by name G.Eswaraiah appeared before the Court and said that no objection had been given by the earlier advocate to him, that he was instructed to appear, but that he was not ready and he wanted further time. Party in person Smt.T.Jyothi also appeared and passed on a letter dt.23-09-2016 to the Court stating that DSR was trying to knock away her property with a *mala fide* intention and filed the case. She also stated that she and her son have half share in 175 sq yds in plot No.1. The Court declined to grant any further time since the WVMP.no.2371 of 2013 had been filed more than 3 years back and on the previous day, the matter had already been argued partly by Sri K.Ravikumar.

23. Sri Sampath Prabhakar Reddy, learned counsel, appearing for GHMC officials contended that TJ and her son made constructions in deviation of the sanctioned plan as mentioned below:

Deviations in Cellar Floor				
Completely unauthorized since the sanctioned plan does not include cellar floor				
Deviations in Ground & First Floor				
Sides	Setback approved	Setback maintained	Shortfall	Remarks
Front (E)	10'-00"	3'-00"	7'-00"	
Rear (W)	3'-00"	Nil	3'-00"	Constructed in excess of the permit holder's to an extent of 25 sq. yds i.e. in Neighbour's plot No.2.
Side 1 (S)	5'-00"	Nil	5'-00"	Encroached on the area of 10.1 sq. yds left for Road by the permit holder for obtaining permit and also encroached the road area of 63.38 sq yds.
Side 2 (N)	6'-6"	0'-6"	6'-00"	

He further contended that TJ and her son converted the ground floor from residential to commercial though permission was granted for exclusive residential use. He clarified that insofar as demolition of deviations is concerned, the Corporation would have jurisdiction, but as regards the delivery of possession of the encroached area to DSR is concerned, the Corporation cannot interfere and only to that extent in the proceedings dt.02-04-2013, the parties were directed to approach the Civil Court. He contended that the demolition pursuant to the notice dt.23-05-2013 could not be done because of the interim order granted by this Court in W.P.M.P.No.18910 of 2013 in W.P.No.15613 of 2013.

24. Counter affidavit taking this stand has been filed by Sri Sampath Prabhakar Reddy in W.P.Nos.15613 and 22303 of 2013. Along with the counter in W.P.No.22303 of 2013, copy of the survey report of the HUDA addressed to the Deputy Commissioner, Circle-12, GHMC is filed enclosing a sketch which showed that

existing road of 30' wide is not as per layout on the ground; instead of that the existing road is formed through plot No.3, that owner of plot No.3 encroached into plot No.2 and, owner of plot No.1 (TJ) also encroached into plot No.2 and the 25' service road. As stated above plot no.2 belongs to DSR.

25. Smt.Jyothi Kiran, learned counsel, appearing for DSR supported the submissions of learned Standing Counsel for GHMC and sought for vacation of the order dt.04-06-2013 in W.P.M.P.No.18910 of 2013 in W.P.No.15613 of 2013.

26. TJ admitted that she had not filed any application for regularization invoking G.O.Ms.No.152 Municipal Administration Urban Development (M-1) Department dt.02-11-2015 whereunder the State of Telangana had issued Telangana Regularization of Unauthorizedly Constructed Buildings and Buildings Constructed in Deviation of the Sanctioned Plan Rules, 2015.

27. As regards the prayer of DSR in W.P.No.23582 of 2012 challenging the action of the GHMC officials in not taking action against TJ for encroaching 25 sq yds on the western side of his plot No.2 is concerned, such relief of recovery of possession can be obtained by DSR only from a competent Civil Court. GHMC officials are not competent to evict TJ from the encroached portion *and* deliver possession of the property to DSR. Therefore, to that extent, the order dt.02-04-2013 of the Deputy Commissioner, Circle-12, West Zone,

Serilingampalli directing the parties i.e. DSR and TJ to approach appropriate forum cannot be found fault with. Therefore, I do not find any merit in W.P.No.23582 of 2012 and it is dismissed.

28. As regards W.P.No.15613 of 2013 filed by TJ against GHMC officials and DSR challenging the proceedings dt.23-05-2013 under Section 636 of the Act issued by the Deputy Commissioner, Circle-12, West Zone, Serilingampalli, is concerned, there is no doubt that TJ had made constructions in her plot No.1 by unauthorizedly raising cellar floor, not adhering to the setbacks as mandated in the sanctioned plan and had also converted the ground floor into commercial for which she had no such permission. This finding of fact has been recorded by the Dy. Commissioner, GHMC not only in his order dt.02-04-2013 but also in the notice dt.23-05-2013 on the basis of the HUDA report dt.25-06-2008 and the sketch appended thereto.

29. Therefore, it cannot be said that the proceedings dt.23-05-2013 are contrary to the proceedings dt.02-04-2013 of the Deputy Commissioner. So the order dt.02-04-2013 of the Deputy Commissioner insofar as he has directed the parties to settle their civil disputes in appropriate forum are to be understood as referable only to the claim of DSR against GHMC and TJ for recovery of possession of the encroached portion of his plot by TJ and does not in any way come in the way of exercise of power under Section 636 of the Act by the officials of GHMC insofar as the constructions made in deviation

of the sanctioned plan are concerned. Therefore, the interim order in W.P.M.P.No.18910 of 2013 in W.P.No.15613 of 2013 is vacated and W.P.No.15613 of 2013 is dismissed.

30. In view of the above reasoning, I do not find it necessary to set aside the direction contained in the order dt.02-04-2013 of the Deputy Commissioner directing the parties to settle their civil disputes in an appropriate forum. I hereby clarify that if DSR wants to be restored of the possession of 25 sq yds of his plot which is allegedly encroached by TJ, he can seek such relief in a competent Civil Court. He cannot seek a direction to the officials of the GHMC to restore possession of his land to him. Therefore, W.P.No.22303 of 2013 is also dismissed.

31. Since the inability of the GHMC officials in demolishing the structures erected by the petitioner in the subject property is on account of the interim direction granted by this Court on 04-06-2013 in W.P.M.P.No.18910 of 2013 in W.P.No.15613 of 2013, it cannot be said that the GHMC officials had willfully disobeyed the order dt.14-12-2012 in W.P.No.31567 of 2012.

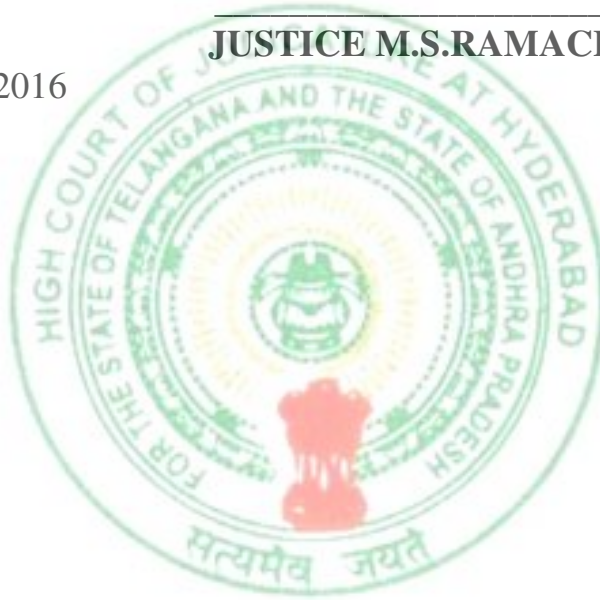
32. Since the interim order dt.04-06-2013 in W.P.M.P.No.18910 of 2013 in W.P.No.15613 of 2013 is now vacated and W.P.No.15613 of 2013 filed by TJ and her son is dismissed, the GHMC officials are directed to take further action pursuant to notice dt.23-05-2013 issued under Section 636 of the Act and demolish the

structures made in deviation of the sanctioned plan by TJ and her son within four weeks from the date of receipt of a copy of the order. Therefore, the Contempt Case is disposed of.

33. With the aforementioned directions, all the Writ petitions are dismissed and the Contempt Case is disposed of. No costs.

34. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

Date: 01-11-2016
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JUSTICE M.S.RAMACHANDRA RAO