

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.1398 of 2012

ORDER:

%Dated 06.01.2016

M/s. Shivani Builders,
Rep.by its Managing Partner
Annabathula Subrahmanya Kumar
and 10 others PETITIONERS

VERSUS

\$ State of Telangana, rep.by its Director,
Department of Archeological & Museum,
Gunfoundry, Hyderabad and 9 others
RESPONDENTS

! Counsel for Petitioners : Sri M.V.S.Suresh Kumar.

^ Counsel for Respondents : G.P. for Home,
G.P. for Reenue,
Standing Counsel for
Municipal Corporation
G.P. for Archeology

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? Cases referred :

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ORDER:

Questioning the action of the respondents in proceeding against the petitioners on the ground that the residential apartments in Plots 15 to 22 comprising premises No.8-2-25 situated at Nizampet, Khammam are constructed within the prohibited area thereby violating the provisions of A.P. Ancient and Historical Monuments and Archeological Sites and Remains Act, 1960 and the Rules framed thereunder and the provisions of the Ancient Monuments and Archeological Sites and Remains Act, 1958, as illegal and arbitrary, the present Writ Petition came to be filed.

The facts in issue are as under :

Originally Plot Nos.15 to 22 bearing Premises No.8-2-25 were owned by one Mohd. Intiyaz Khan and Manukonda Venkata Buchaiah, who later sold their respective properties to one Pullakhandam Srinivasulu under registered Document Nos.3333/1949 and 196/1951. The Government of Andhra Pradesh vide G.O.Rt.No.1777 dated 15.12.1978 also granted permission to the legal heirs of Pullakhandam Srinivasulu to construct a compound wall for the entire area. It is further stated that during the years 2001 to 2003 the L.Rs., of Pullakhandam Srinivasulu sold the said property to Gutta Bhisma Rao, Amanchi Dharmavathi and Harish Kumar Chowada, who in turn sold part of the said property to Katakam Srilaxmi, Katakam Subhashini,

Juturu Nagabhushanam, Juturu Devi Mani, Devarasetti Ravi Kumar and Baglunatla Pushpa Rani. Subsequently, the Khammam Municipality also issued proceedings dated 09.09.2009 regularizing the layout in respect of the said plots. It is further stated that said Gutta Bhisma Rao and others executed development agreement-cum-General Power of Agreement vide Doc.Nos.3145/2009, 780/2009 dated 13.02.2009 and 09.06.2009 respectively in favour of the petitioner No.1 viz., Shivani Builders for construction of multistoried apartments in the said plots. On 09.09.2009 the Khammam Municipality also granted permission for construction of a residential complex in the said premises. Then the 1st petitioner constructed two Blocks, each comprising 20 Flats. The petitioners 2 to 11 purchased Flats in one Block under registered documents by securing bank loans. It is further stated that electricity connection was granted in respect of 1st Block and Occupancy rights certificates were also granted by Khammam Municipality on 03.08.2011. While things stood thus, on 03.01.2012 a notice came to be issued by the Director of Archeology and Museums, Gunfoundry, Hyderabad questioning the construction of building in the prohibited area of Khammam Fort and intending to take action against the 1st petitioner. The Tahasildar (R-7) also issued a notice dated 06.01.2012 to the 1st petitioner, referring to Section 20-A of the

Ancient Monuments and Archaeological Site and Remains Act, 1958, stating that the residential complex which has come up within 100 meters of the protected area of Khammam Fort in contrary to law and the rules. Following the said notice, the Assistant Director of Archeology and Museums, Warangal and the Municipal Council, Khammam also issued notices dated 12.01.2012 questioning the constructions made in the prohibited area. On 13.01.2012 the Northern Power Distribution Company Ltd., issued a notice intimating disconnection of power supply to the apartments within three days. The Police personnel also visited the apartments stating that criminal cases would be filed against them on the ground that their flats are situated in prohibited area. Challenging the action of the authorities as illegal, misconceived and without jurisdiction, the present Writ Petition is filed.

The learned counsel for the petitioners would contend that the Ancient Monuments and Archeological Sites and Remains Act, 1958 and the Rules framed thereunder apply only to National Monuments, and that the Khammam Fort which is not declared as a National Monument do not fall within the purview of the said Act. It is further stated that insofar as A.P. Ancient and Historical Monuments and Archeological Sites and Remains Act, 1960 and the Rules are concerned, the extent of

prohibited area or regulated area of Khammam Fort has not been declared so far in the Gazette as required under Rule 2(g) of the said Rules. It is thus contended that unless there is a Gazette notification declaring a particular area as a prohibited area or a regulated area, the construction made therein cannot be declared as illegal. It is further urged that Rules 28 and 29 of A.P. Ancient and Historical Monuments and Archeological Sites and Remains Rules, 1960 provide for issuance of notice by the Government expressing its intention to declare the prohibited area or regulated area specifying limits of the area and calling for objections by way of notification and after considering the objections, if any, another notification has to be issued specifying the prohibited area or regulated area for the purpose of mining operations or construction or both. In the absence of any such procedure being followed, it is urged that the action of the authorities is illegal and improper.

First respondent/Director of Archeology and Museums, filed his counter contending that the plots are situated very close to the Khammam Fort wall, which is a protected monument and the petitioners are required to obtain the NOC from the Director of Archeology and Museums before applying for permission with the Municipality. It is further contended that under the

provisions of A.P.Ancient and Historical Monuments and Archeological Sites and Remains Act, 1960 and the Rules made thereunder, no structure can be put up within the prohibited area i.e., within 100 meters of the protected monument; and regulated area i.e., within 300 meters of the protected monument. But however, he admits that number of constructions have come up in the prohibited area in violation of provisions of the Act. It is further stated that the Khammam Fort was declared as protected monument by the then Hyderabad Government vide publication dated 11.06.1953 in the Hyderabad Government Gazette without boundary particulars and extent of area. Subsequently the Department has been making correspondence with the Revenue Authorities for furnishing the details such as extent, boundary particulars and sketch map for demarcating the prohibited and regulated zones of the Monument and the details of which are awaited. It is said that after receiving the necessary information the demarcations would be made and published in the Gazette. In view of the above, he submits that the action of the Department cannot be found fault with.

Heard learned standing counsel for Khammam Municipality, but no counter is filed on their behalf.

There is no dispute that Khammam Fort is a protected monument and the same finds place in the

Hyderabad Government Gazette dated 11.06.1953. It is also not in dispute that though Khammam Fort has been declared as a protected monument by the Hyderabad Government vide Gazette dated 11.06.1953, the same does not find place in the list of National Monuments. As per the A.P.Ancient and Historical Monuments and Archeological Sites and Remains Act, 1960, a “protected area” means any archeological site and remains which is declared to be a protected area by or under the Act. “Protected monument” as defined in Section 2(k) of the Act, means an ancient historical monument which is declared to be a protected monument by or under the said Act. Similarly, the Rules framed under the Act define what a prohibited area and a regulated area mean. 2(g) of the Rules define prohibited area or regulated area as an area near or adjoining a protected monument which the Government has, by notification in the Andhra Pradesh Gazette, declared to be a prohibited area or, as the case may be, a regulated area for the purpose of mining operation or construction or both. Before declaring an area near or adjoining a protected monument to be a prohibited or a regulated area, for the purpose of mining or construction or both, the Government shall by notification in A.P. Gazette give one month’s notice of its intention to do so and a copy of such notification shall be affixed in a conspicuous place near the area. Thereafter, under Rule 29, Government after

considering the objections, if any, within the period of one month as contemplated under Rule 28 may declare by notification in the official gazette, the area specified in the notification under Rule 28 or any part of such area to be a prohibited area or a regulated area for the purpose of mining operation or construction or both.

A reading of Rules 28 and 29 clearly show that two notifications are necessary for initiating the proceedings. The first one is under Rule 28 giving a month's notice of its intention to declare a particular area as a prohibited or regulated area and the second one is by the Government after considering the objections received under Rule 28 specifying the area to be prohibited or regulated area for the purpose of mining or construction as per Rule 29. As stated earlier, the averments in the counter and material on record does not anywhere indicate issuance of any Gazette notifications till date. On the other hand the averments in the counter filed by the respondents clearly show that such a notification was never issued and negotiations are going on even as on today between one department and another department for the purpose of making such declaration. In the absence of any such notification being issued till date, the objections which are now raised by the respondents with regard to construction of Flats in the area are totally illegal and contrary to the provisions of the Act and Rules. Further,

the material on record would also show that on 09.09.2009 the Khammam Municipal Corporation granted permission for construction of residential complex in the said premises, pursuant to which, the first petitioner constructed two Blocks, each comprising 20 flats. The petitioners 2 to 11 have purchased Flats in one Block by way of registered documents after obtaining loans from Nationalized Banks. In the absence of issuance of any notification in the Gazette, as required under Rule 28 and Rule 29, the contention of the respondents that the constructions raised by the petitioners fall in a regulated or prohibited area, cannot be accepted and hence, the Writ Petition is liable to be allowed.

Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous Petitions, pending if any, in this Writ Petition, shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

Dt: 06.01.2016

Note :
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B/o. GM