

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

WRIT PETITION NO.34990 OF 2015

DATED: 19-05-2016

Between:

Jaan Mohammed @ Shahin ... Petitioner

And

State of Telangana
Rep. by the Principal Secretary
Municipal Administration
Secretariat
Hyderabad
and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER : Mr. Mohd. Shujauddin

COUNSEL FOR RESPONDENT NO.1 : G.P. for Municipal
Administration

(TS)

COUNSEL FOR RESPONDENT NOS.2 to 4 : Mr. N. Ashok Kumar

COUNSEL FOR RESPONDENT NOS.5 and 6 : Mrs. Jayasree, for
Mr. C. Damodar Reddy

THE COURT MADE THE FOLLOWING:

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JUDGMENT:

The petitioner, who is a victim of an illegal construction being raised by respondent Nos.5 and 6, filed this writ petition for a mandamus to declare the inaction of respondent Nos.2 to 4 in taking action against such illegal construction, despite his representations dt.28.8.2015, 01.9.2015 and 04.9.2015, as illegal.

2. The petitioner has pleaded that he succeeded to the property bearing House No.5-3-1041, Shanker Bagh, Nizamshahi Road, Hyderabad, from his

ancestors and that he has been carrying on his business in the ground floor and residing in the upper floors since more than thirty years. He has further pleaded that respondent Nos.5 and 6 have been proceeding with an illegal and unauthorized construction of a multistoried complex in the premises bearing Nos.5-3-1002 & 1003, Nizamshahi Road, Hyderabad, abutting the building, called 'Kesari building', that for approaching his house, the petitioner has to cross the property of respondent Nos.5 and 6, who have encroached the footpath and public road without following the zonal regulations and that as he is facing inconvenience on account of the afore-mentioned illegal construction of respondent Nos.5 and 6, he made representations to respondent Nos.2 to 4 on 28.8.2015, 01.9.2015 and 04.9.2015, but the said respondents failed to take any action.

3. On 28.10.2015 the case came up for admission and at the request of the learned Standing Counsel for the Greater Hyderabad Municipal Corporation (for short, 'the Corporation'), the case was adjourned to 03.11.2015. On 03.11.2015, this Court passed the following order:

"Learned Counsel for the petitioner is not present.

The grievance of the petitioner, as that of the multitude of persons living in the twin cities of Hyderabad and Secunderabad, is that his neighbour is raising construction in violation of the sanctioned plan without leaving any setbacks. The petitioner has made representation on 28-08-2015 to respondent No.2 expressing his grievance in this regard and the same was followed up by two more representations, dated 01.09.2015 and 04.09.2015.

At the hearing, Mr.N.Ashok Kumar learned Standing Counsel for GHMC, submitted that on 12-10-2015, respondent No.4 had issued a notice under Section 452 (1) of the GHMC Act, 1955, and that on receipt of the same, respondent Nos.5 and 6 have approached the civil Court and obtained an interim injunction order.

The facts noted above are very familiar to this Court in many a case. The Municipal Corporation, which is charged with the responsibility of Planned Development, does not appear to be discharging its functions effectively in curtailing the menace of illegal constructions. The staff of the Corporation, who are expected to undertake surveillance over the constructions, appear to be failing in their duty to report illegal constructions to their higher officials, as a result of which, complaints of illegal constructions are galore by way of Writ Petitions before this Court. In most of the cases, notices are being issued by the Municipal Corporation only after the aggrieved persons made their complaints or after they approach this Court by filing Writ Petitions. What this Court is unable to understand is as to why the Corporation is not detecting the illegal constructions on its own and preventing them at the inception itself instead of waiting for the aggrieved parties to give a complaint. This Court is also noticing that immediately on receipt of notices, the violators go to the civil Court, obtain orders of injunction and complete the constructions in the guise of such injunction orders. This has been happening to a set pattern. This Court feels that it is high time that this menace is curbed before it becomes too late. Respondent No.2 is, therefore, directed to file his personal affidavit as to the measures he is proposing to undertake to nip in the bud the illegal constructions without forcing the aggrieved parties to resort to avoidable litigation.

Post on 16-11-2015.

Learned Standing Counsel for respondent Nos.2 to 4 undertakes to file his Vakalat/Memo of Appearance within one week from today, failing which, his name shall be deleted from the cause list."

In compliance with the directions of this Court, Mr. B. Janardhan Reddy,

the Commissioner of the Corporation, has filed an affidavit enumerating various measures being taken by the Corporation to prevent and remove illegal constructions. In paragraph 10 of the affidavit he has given various details of the steps being taken by the Corporation which read as under:

“a) As per GO Ms. No.168, MA, Dt.07.04.2012, the GHMC is implementing the mortgage clause keeping 10% of area mortgage with GHMC for plots more than 200 Sq. Mts. If the owner deviated the sanctioned plan, more than 10% of set back area, laid additional floor over and above sanctioned plans, the mortgage area will be seized and action will be taken as per provisions 461, 452 & 636 of HMC Act against such unauthorized constructions.

(b) As per the provisions of 461(4) of HMC Act there is a provision of filing a case against the person who is making unauthorized construction, instructions has been issued to all Asst. City Planners of GHMC for Cir. No.1 to 18 to file criminal cases against the persons who violated the provisions U/s.428, 433 of HMC Act and file an FIR against the person who made unauthorized construction.

(c) The GHMC has requested the Govt. for amendment of certain Acts/Provisions, so as to make unauthorized construction as cognizable offence, in order to curb unauthorized constructions.

(d) At Head Office level a task force team has been constituted by appointing three retired officers at the rank of two ACPs and one DCP to verify and report on the complaints received from public and also to make surprise checks as to take action against the unauthorized constructions as well as against the field officer who have not taken action promptly.

(e) GHMC has requested the Govt. for suitable amendments to the Registration Act for not to register the unauthorized constructions of buildings or plots.

(f) GHMC has also requested the Govt. to set up Town Planning Tribunal duly amending GHMC Act for speedy disposal of cases against GHMC regarding the unauthorized constructions or deviations against sanctioned plan.

(g) The GHMC also contemplating to invite public opinion and suggestions on measures to prevent menace of illegal and unauthorized constructions.

(h) The Corporation also taking steps against the officers who shown negligence in their duties and during last 6 months, two Town Planning Supervisors were kept under suspension for the negligence of their duties in identification and taking action against unauthorized constructions.”

Upon considering the afore-noted contents of the affidavit, this Court has passed a detailed order on 01.12.2015 whereunder certain directions were issued to respondent No.1 on the following aspects.

- (i) “Amendment of relevant Acts/provisions for making unauthorized construction a cognizable offence;*
- (ii) Constitution of task force at Head Office level by appointing three retired officers at the rank of ACP (2) and DCP (1) to verify and report on the complaints received from public and also to make surprise checks so as to take action against the unauthorized constructions as well as against the field officers who have not taken action promptly;*
- (iii) Suitable amendments to the Registration Act, 1908, not to register the unauthorized buildings or plots;*
- (iv) To set up Town Planning Tribunal duly amending the provisions of the Greater Hyderabad Municipal Corporation Act for speedy disposal of cases filed against the GHMC with regard to constructions made unauthorizedly or in deviation of the sanctioned plan; and*
- (v) To appoint adequate staff to fill up about 200 existing vacancies.”*

4. As directed by this Court, Mr. M.G. Gopal, Special Chief Secretary to Government, Municipal Administration & Urban Development Department, Government of Telangana, has filed an affidavit wherein he has stated that as regards the request of the Corporation to treat the acts of unauthorised

construction a cognizable offence, by Act No.6 of 2008, an amendment was made to Section 461 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') by adding sub-section (4) thereto, by making an illegal/unauthorized construction a cognizable offence and prescribing imprisonment for a term which may extend to three years or with fine which shall be levied as provided in Schedules U and V of the Act read with Section 596 thereof. While it is not clear from the reading of the aforementioned sub-section which vested discretion in the Court either to sentence the guilty to imprisonment for a term which may extend to three years or to levy fine as prescribed under Schedules U and V of the Act read with Section 596 of the Act, as to whether this offence is made cognizable, assuming it is so, the Corporation is sparingly invoking this penal provision, as could be seen from the statistics given out by respondent No.1, as per which during 2014-15 itself, 865 unauthorized constructions were identified, and only 31 criminal cases were registered from the year 2008 when the afore-mentioned amendment to Section 461 of the Act was made. This fact clearly shows that the Corporation is not invoking the penal provision against the persons who are indulging in serious violations of sanctioned plans and building regulations while making constructions.

5. In a recent judgment in *K.M. Pratap v. State of Telangana* (W.P. Nos. 9687 and 11460 of 2015, dt.25.4.2016), this Court has expressed serious concern at the manner in which the unscrupulous builders and developers have been making illegal constructions, destroying the concept of planned development. I can do no better than quoting the relevant portions of the judgment hereunder:

"15. *G.S. Shinghvi, J. sitting with B.N. Agrawal, J. in Shanti Sports Club v. Union of India* ^[1] contrasted developed countries with developing countries in the matter of strict adherence to the concept of planned development. The Court held that people of the developed countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the master plan etc., that they respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan etc., in the construction of buildings, residential, institutional or commercial and that in contrast, scenario in the developing countries like ours is substantially different. That though the competent legislatures have from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity. The Supreme Court further held at paragraphs 74 and 75 as under:

"74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or

the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc....

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

16. In Dipak Kumar Mukherjee v. Kolkata Municipal Corporation ^[2] taking judicial notice of the fact that during the last four decades the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country has acquired monstrous proportions, the Supreme Court referred to a slew of the judgments in K. Ramadas Shenoy v. Town Municipal Council, Udipi ^[3], Virender Gaur v. State of Haryana ^[4], Pleasant Stay Hotel v. Palani Hills Conservation Council ^[5], Cantonment Board, Jabalpur v. S.N. Awasthi ^[6], Pratibha Co-op. Housing Society Ltd. v. State of Maharashtra ^[7], G.N. Khajuria v. DDA ^[8], Manju Bhatia v. NDMC ^[9], M.I. Builders (P) Ltd. v. Radhey Shyam Sahu ^[10], Friends Colony Development Committee v. State of Orissa ^[11], Shanti Sports Club (1 supra) and Priyanka Estates International (P) Ltd. v. State of Assam ^[12].

17. Contemporaneous to the judgment in Dipak Kumar Mukherjee (2 supra), the Bench comprising the same learned Judges, in Esha Ekta Apartments Co-operative Housing Society Ltd. v. Municipal Corporation of Mumbai ^[13] echoed the views of the earlier judgments.

18. The serious concern shown by the highest court of the land in the aforementioned judgments did not appear to have any impact whatsoever either on the violators of the building laws or on the executive governments. Undeterred by the strong indictment of regularisation schemes, the successive governments have been coming out with regularisation schemes every now and then. The schemes have been proved as havens for the violators and a curse for the society. As held by the Supreme Court in Dipak Kumar Mukherjee (2 supra), the common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan and that the failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors. This Court wonders as to in what other language the regulatory bodies, such as GHMC, must be told to curb the menace of illegal constructions, free the innocent victims from sufferance and ensure planned development?

6. Considering the fact that illegal constructions are reaching monstrous

proportions year after year, this Court is of the firm opinion that mere threat of demolitions cannot effectively curb this social evil, unless serious threat of enforcement of penal provision looms large on the violators. This Court therefore does not see any reason why the Corporation shall not take advantage of the provisions of Section 461(4) of the Act and ensure registration of the criminal cases and arrest of the violators, in cases of unauthorized constructions, i.e., constructions without permission and illegal constructions, i.e., constructions made in deviation of plans, except in cases of minor deviations.

7. Coming to the request of the Corporation for constitution of a Town Planning Tribunal, this Court sees every justification in such request. As observed by this Court in its order dt.03.11.2015, the parties who receive notices from the Corporation approach the Civil Courts and secure orders of injunction and complete the constructions in the guise of such injunction orders and that all this has been happening to a set pattern. The opinion of this Court stands fortified from the following statistics called for by the Registry on the direction of this Court, from the Chief Judge, City Civil Court, Hyderabad, which are astonishing.

Name of the Court	No. of cases pending	Injunction	Status quo
Chief Judge Court	14	13	1
II ACJ	33	33	-
XXVII ACJ	2	-	2
VII SCJ	3	3	-
I JCJ	90	10	80
IV JCJ	458	30	428
VI JCJ	920	-	920
TOTAL	1520	89	1431

From the above reproduced table, it is evident that in all, 1520 suits have been instituted against demolition notices, and that the Civil Courts have granted interim orders of either injunction or *status quo* in 1431 cases, which not only prevent demolition of illegal constructions by the Corporation, but also enable the violators to make further constructions. This Court does not propose to comment on the manner in which the Civil Courts are exercising jurisdiction, in the interests of propriety. However, this Court cannot refrain from expressing its thorough dissatisfaction at the manner in which the process of law is being abused by the unscrupulous violators, of building laws and destroying the concept of planned development, by taking the aid of the orders of the Courts. This Court, therefore, feels that constitution of a Town Planning Tribunal, excluding the Civil Courts' jurisdiction, is an imminent necessity so that the proposed forum, which must comprise at least one expert in the Town Planning field, may function with all the responsibility as is needed to promote the concept of planned development and prevent proliferation of illegal and unauthorized constructions in municipal areas within the State of Telangana.

8. As regards the unfilled vacancies in the Corporation, para-7 of the

affidavit filed by the Special Chief Secretary to the Government, reads as under:

“Regarding appointment of adequate staff to fill up about 200 existing vacancies in Greater Hyderabad Municipal Corporation (GHMC), I respectfully submit that the Secretary, Telangana State Public Service Commission (TSSPC) issued notification vide Notification No.16/2015 for filling up 123 Town Planning and Building Overseers in Zone-V and Zone-VI. Examination conducted on 06.12.2015 and verification of certificates of eligible candidates are also completed and some of these TPBOs will be posted in GHMC on deputation. I respectfully submit that filling up vacant posts in higher cadre i.e., City Planners/Asst. City Planners is under consideration of the Government.”

9. Whenever the Corporation is confronted by the Court on the laxity on its part in taking prompt action to prevent illegal constructions, the stock reply heard from it is lack of adequate staff. There is therefore urgent need for filling up of the vacancies on a war footing. Respondent No.1 shall therefore allot adequate number of Town Planning and Building Overseers to the Corporation as expeditiously as possible. Respondent No.1 shall also ensure that the vacant posts of City Planners and Assistant City Planners are filled up without loss of time.

10. As regards the grievance of the petitioner against respondent Nos.5 and 6, since a Civil Court of competent jurisdiction has granted an interim order in their favour, it is not possible to issue mandamus to take action against the illegal construction raised by the latter. However, the Corporation shall take immediate steps to get the order of the Civil Court vacated.

11. For the aforementioned reasons, this writ petition is disposed of with the following directions:

- (i) The Corporation shall file a written statement in the suit and also a counter affidavit in the I.A. filed for interim relief, by respondent Nos.5 and 6, as expeditiously as possible.
- (ii) The Corporation shall, in addition to issuing notices under Section 452 and 636 of the Act, invoke the provisions of Section 461(4) of the Act wherever it finds the unauthorized constructions and constructions with substantial violations, such as set back violations, construction of extra floors, etc., by giving Police Report and prosecute the violators.
- (iii) Respondent No.1 shall consider the request of the Corporation for constitution of a Town Planning Tribunal, in the light of the observations made in this judgment, take a decision with due expedition.
- (iv) Respondent No.1 shall allot on deputation to the Corporation, required number of Town Planning and Building Overseers and also ensure that vacant posts of City Planners and Assistant City Planners are filled up expeditiously and not later than four months from the date of receipt of this Judgment.

12. As a sequel to disposal of the writ petition, W.P.M.P. No.44963 of 2015 shall stand disposed of as infructuous.
13. The Registry shall list the case on 14-10-2016, under the caption 'For Receipt of Report'.
14. Respondent No.1 shall submit a compliance report on or before 30-09-2016.

C.V. NAGARJUNA REDDY, J

19-05-2016

bnr
Note: L.R. copies to be marked.
(B.O.)
bnr

[\[1\]](#) (2009) 15 SCC 705
[\[2\]](#) (2013) 5 SCC 336
[\[3\]](#) (1974) 2 SCC 506
[\[4\]](#) (1995) 2 SCC 577
[\[5\]](#) (1995) 6 SCC 127
[\[6\]](#) 1995 Supp (4) SCC 595
[\[7\]](#) (1991) 3 SCC 341
[\[8\]](#) (1995) 5 SCC 762
[\[9\]](#) (1997) 6 SCC 370
[\[10\]](#) (1999) 6 SCC 464
[\[11\]](#) (2004) 8 SCC 733
[\[12\]](#) (2010) 2 SCC 27
[\[13\]](#) (2013) 5 SCC 357