

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.8315 of 2009

ORDER:

This writ petition is filed seeking the following relief/s:

'...to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus by declaring the action of the respondent in not taking any action for preventing and demolishing illegal construction as per the complaint dated 01-01-2009 as wholly illegal, arbitrary, unconstitutional and violative of article 14 and 21 of Constitution of India and consequently direct the respondent to take action pursuant to the complaint made by the petitioner association and demolish all the illegal constructions made in the "Pranava Surya Planet" as Survey No.56, Beside Maharshi Vidya Mandir, Kondapur, r.r. District and also direct the 2nd and 3rd respondents not to interfere with the administration and maintenance of the apartment being done by the petitioner association in the interest of justice and pass such other order...'

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioner, the learned Standing Counsel for GHMC appearing for the 1st respondent and the learned counsel appearing for the respondents 2 and 3. I have perused the material record.

3. The case of the writ petitioner Flat Owners' Association, as set out in the writ petition, in brief, is as follows:

The Association consists of members, who are owners of individual flats in multi storied complex by name 'Pranava Surya Planet'. Each flat owner is entitled to an absolute right over common areas and facilities provided in the apartment complex. Such right is a statutory right. It is obligatory on the part of the staff of the Municipal Corporation of Hyderabad to supervise and see that the construction of the complex is made according to the sanctioned plan without any deviations. While so, after the members of the Association purchased their individual flats, the respondents 2 and 3, that is, the builder and the owner, in collusion had constructed on the terrace, two more flats and also one room in the stilt, which is meant for watchman. The said constructions are made in violation of the approved plan and the provisions of the Apartments (Promotion of Construction and Ownership) Act, 1987 ('the Act', for brevity). When such illegal constructions are being made, the Association had submitted a representation dated 01.01.2009 to the 1st respondent and had also given a reminder dated 24.02.2009. The 1st respondent, having acknowledged the receipt of the said representation and also the reminder, had failed to take any action in accordance with the procedure established by law. Feeling aggrieved, the present writ petition is filed.

4. The 1st respondent in its counter would submit that the petitioner Association had submitted a representation dated 01.01.2009 and a reminder dated 24.02.2009 to the Office of the 1st respondent is true and that the then Deputy Commissioner had sent replies to the complainant K. Vijayalakshmi and also to T. Suresh, the Secretary of the said Association stating *inter alia* that technical permission has been accorded by the then HUDA *vide* its letter No.6262/P4/H/2005 for construction of a residential apartment complex consisting of stilt + 5 upper floors and that permit sanction was released by the then Commissioner, Serilingampally Municipality *vide* proceeding dated 14.10.2005 and that after inspection of the building, it is observed that the builder has constructed the extra 6th floor in contravention of the permit plan and that one B. Ravi Kumar and Ch.Sudeepthi, who are the present owners of the residential flats 601 and 602 of the 6th floor had filed separate applications dated 19.05.2008 and 28.05.2008 for regularisation of unauthorised construction by paying the necessary fee and that the said applications under the BP scheme are not disposed of due to the pendency of the writ petition before this Court and that notices under Sections 452(1) and 461(1) of the GHMC Act have already been issued in regard to the unauthorised construction of two flats and one room in the parking place/stilt floor and that in view of the pendency of the applications submitted under BP scheme, the writ petition is liable for dismissal.

5. The 2nd respondent filed a counter affidavit *inter alia* stating that the Government of Andhra Pradesh had issued GO.Ms.No.901 Municipal Administration and Urban Development (M1) Department dated 31.12.2007 and that the terms of the said GO are amended from time to time and that the owner Sudeepthi by availing the benefit under the said GO had submitted an application for regularisation of the unauthorised construction and also in regard to the other flats that had fallen to her share in the apartment complex and that the said application is submitted for abundant caution and that the construction was completed even by the year 2007 and that the association is collecting maintenance charges from the 2nd respondent and that in view of the collection of maintenance charges, the present writ petition is not maintainable.

6. The 3rd respondent had also contended *inter alia* that the benefits under the GO.901 dated 31.12.2007 are available to the subject building under the BP scheme and that the writ petition is filed out of vengeance and only to blackmail the 3rd respondent to settle the terms with the petitioner and that the construction is completed in the year 2007 and that in view of the collection of maintenance charges by the Association and payment of taxes to the Municipality and the pendency of the application under the BP scheme, the writ petition is not maintainable and is liable for dismissal.

7. The learned counsel for the parties made submissions in line with the respective pleadings.

8. The learned counsel for the petitioner would submit as under: 'As per the approved plan only five floors are to be constructed. Further, as the approval was obtained for constructing five floors, the foundation for the apartment complex was laid to support the construction of only five floors. Therefore, the additional floor constructed would endanger the life of the building. Once the builder had constructed the building as per the plan, as per the provision under Section 4 of the Act, he should simply leave the building

go. The builder has no right to make further constructions in deviation of the approved plan. When once the flats are purchased by the individual members of the association, they all become the common owners of the common areas and the facilities including the common parking places as per the approved plan. The common places vest in the owners of the flats of the apartment complex, as common facilities and they shall be deemed to have been conveyed along with the apartment/flat to the individual flat owners association in terms of the provisions of the said Act even though such conveyance is not mentioned in the individual documents of the flat owners. The above stated propositions find support from the precedential guidance in various precedents also. In view of the provisions of the Act and the precedents governing the *lis*, the 1st respondent is obligated to consider and dispose of the representation of the writ petitioner association and take action for demolition of the unauthorised construction made in the 6th floor in deviation of the approved plan and also act on its notice which was already issued for demolition of the room in the still floor. Therefore, the writ petitioner is entitled to the reliefs as prayed for. Though the writ petition is filed complaining against the constructions illegally made, there was a proposal for settlement and the Association has agreed to receive Rs.9,00,000/- and allow the constructions to stay. However, the said proposal did not fructify.'

9. The learned counsel for the respondents 2 and 3 while reiterating the respective pleadings of the respondents would submit that the BP scheme applications of the owners of the flats are pending with the 1st respondent and that the 1st respondent could not consider the said application in view of the pendency of this writ petition. The learned Standing Counsel appearing for the 1st respondent would also support the said respondents 2 and 3 in regard to their contention that the owners of the flats had submitted applications under the BP scheme and that the respondents 2 and 3 could not take any action because of the pendency of the writ petition. He would further submit that if the writ petition is disposed of appropriate action as contemplated under law would be taken and that insofar as the room in the still floor, action had already been initiated.

10. At the hearing, it is brought to the notice of this Court that earlier the purchasers of flats in the aforesaid apartment complex had filed a writ petition in WP.No.1246 of 2010 questioning the action of the respondents 1 and 2 therein i.e., GHMC and Deputy Commissioner of GHMC in receiving the application under BP scheme submitted by the respondents 3 and 4 therein i.e., one Sudeepthi and another Ravi Kumar in respect of pent houses in flat nos.601 and 602 as illegal and arbitrary and sought for consequential directions to the said respondents to remove such unauthorised structures and that this Court by orders dated 29.01.2010 had disposed of the said writ petition with certain directions.

11. I have gone through the pleadings and given earnest consideration to the submissions. I have also gone through the orders of this Court in the above writ petition.

12. The members of the petitioner Association are purchasers of flats in the aforementioned apartment complex. In this writ petition, it is stated that in the 6th floor of the said complex, two apartments (flat nos.601 and 602) have been constructed by the respondents 2 and 3 without any permission from the competent authority and in deviation of the approved plan and that such constructions are not only illegal but are also endangering the life of the building and are causing inconvenience to the flat owners who are the members of the petitioner association and that the said constructions in the sixth floor are also contrary to the provisions of law and precedential guidance in various precedents and that, therefore, the 1st respondent is obliged under law to consider the representation dated 01.01.2009 of the petitioner Association and take action against the

illegal constructions. It is also averred in the writ petition that the 1st respondent is obliged to act upon the notice which was already issued. Be that as it may. The case of the respondents 2 and 3 is that such constructions are eligible for regularisation under BP scheme in view of the fact that the owners of the said flats are entitled to the benefits of G.O.901 whereunder such scheme is notified. The learned counsel for the 1st respondent also would submit that the applications filed for regularisation of the two flats in the 6th floor are pending consideration and that the petitioner Association can as well approach the competent authority and submit its objections for consideration.

13. In view of the facts of the case, the submissions and the relief claimed in the writ petition and also the earlier orders of this Court in WP.No.1246 of 2010 dated 29.01.2010, this Court is of the considered view that whether or not the applicants, who had submitted applications for regularisation of pent houses viz., flat nos.601 and 602, would be entitled to have the benefit of the BP scheme is a matter to be considered by the competent authority. It is also not in dispute that the BP scheme was earlier upheld by this Court. Therefore, this Court deems it appropriate to dispose of the writ petition directing the petitioner Association to put-forth its objections before the 1st respondent with regard to the regularisation of the two flats bearing flat nos.601 and 602 constructed in the 6th floor and further directing that the 1st respondent shall take such objections into consideration before passing appropriate orders in strict accordance with the procedure established by law on the applications under BP scheme submitted in regard to the aforesaid flats. It is made clear that the petitioner Association may submit all its objections including the precedents which it intends to rely upon before the said authority when the applications under the BP scheme are taken up for consideration. The competent authority shall complete the necessary exercise within a period of two (02) weeks from the date of the receipt of a copy of this order.

14. The Writ Petition is, accordingly, disposed of.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

01.02.2016
Vjl

M. SEETHARAMA MURTI, J