

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.V.M.P.No.757 of 2016

in

W.P.No.2492 of 2016

and

W.P.No.2492 of 2016

COMMON ORDER:

This Writ Petition is filed challenging the proceedings in reference WP.No.11793/2015/ACP-III dt.16.12.2015 of the Commissioner of the 2nd respondent – Municipal Corporation refusing to cancel the building plan in reference B.A.No.10567/2012/ACP-III, dt.01.08.2012 granted to respondent nos.5 and 6 for construction of a sub-cellar, cellar for parking, ground plus four upper floors for a hotel building in an extent of 1890.61 square meters, covered by T.S.No.1187, Block No.53 of Rockdale Lay-Out, Waltair Ward, Ward No.19 of 2nd respondent-Corporation.

THE BACKGROUND FACTS

2. The petitioner is the Trust Association of the Convention of the Baptist Churches of the Northern Circars (for short 'CBCNC') and is a Society registered under the Societies Registration Act, 1860. It has properties in seven coastal districts of the State of Andhra Pradesh. The Writ petition was filed by Dasari Yacob styling himself as Chairman of petitioner Association.

3. According to petitioner, one such property owned by it is a plot admeasuring 3862.49 square yards with a building thereon with

madras-tiled roof house bearing D.No.11-5-1 in T.S.No.1187, Block No.53, Rockdale Lay-out, Waltair Ward, Visakhapatnam within the limits of 2nd respondent.

4. O.P.No.13 of 2004 was filed by 4th respondent against M. Vijay Kumar and others CBCNC (No.16/48-49) for the following reliefs :

“(a) for a declaration that none of the respondents, their men or agents have any legal right whatsoever to call, hold or organize the annual convention of the members of (CBCNC) (No.16/48-49) or conduct elections for the office bearers of (CBCNC) (No.16/48-49) or its various boards, at any place including at Kakinada or Visakhapatnam under any notification or in pursuance of the notifications / pamphlets already passed / issued or proposed to be passed or issued either by themselves or through their nominees, privies etc;

(b) for a consequential relief for permanent injunction restraining the respondents, their men and agents, from proclaiming or projecting as Office bearers of (CBCNC) (No.16/48-49) or from organizing the annual convention of the members of the (CBCNC) (No.16/48-49) or election of office bearers of (CBCNC) (No.16/48-49) members or its various boards at any place including at Kakinada or Visakhapatnam under any notification or in pursuance of the notifications / pamphlets already passed / issued or proposed to be passed or issued either by themselves or through their nominees, privies, etc.,

(c) To appoint an Advocate-Commissioner for the purpose of holding an annual convention for all the members of the (CBCNC) (No.16/48-49), either in the month of January 2004 or immediately thereafter, as per the constitution and bye-laws of the (CBCNC) (No.16/48-49), and entrust the administration and management of all assets of (CBCNC) (No.16/48-49) to the office bearers so elected in the said election, who shall be the rightful body to represent the (CBCNC) (No.16/48-49);

(d) *for costs; and*

(e) *for such other relief or reliefs as your Honourable Court deems fit and proper in the circumstances of the case.”*

5. On 06.01.2004, I.A.No.25 of 2004 in O.P.No.13 of 2004, the IV Additional District Judge, Visakhapatnam was filed to appoint an Advocate-Commissioner for the purpose of holding an annual convention for all the members of the CBCNC (No.16/48-49) either in the month of January, 2004 or immediately thereafter, as per its constitution and bye-laws and to entrust the administration and management of all assets of CBCNC to the office-bearers so elected in the said election, who shall be the rightful body to represent it pending the O.P.

6. The said I.A. was allowed on 21.01.2004 as prayed for and Sri P. Srinivas Rao, Secretary of the Bar Association, Visakhapatnam was appointed as the Advocate-Commissioner and he submitted a report stating that he conducted an election in which the 4th respondent was elected as Chairman.

7. The 4th respondent, styling himself as Chairman of petitioner-Association, entered into a lease with respondent nos.5 and 6 on 15.09.2004 for a period of ninety-nine years of the above property.

8. On the basis of the said lease granted in favour of respondent nos.5 and 6, they applied for permission to make construction in the above property and obtained the same on 01.08.2012 in B.A.No.10567/2012/ACP-III for construction of sub-cellar and cellar

for parking, ground plus four upper floors for a hotel building of extent 1890.16 square meters covered by T.S.No.1187, Block No.53, Rockdale Lay-out, Waltair Ward, Visakhapatnam.

9. In the mean time, I.A.No.234 of 2004 was filed in O.P.No.13 of 2004 by one S.M. Kanta Raju, who had been impleaded as 5th respondent in the said O.P., to decide the maintainability of the O.P.No.13 of 2004 as a preliminary issue. He alleged that he had filed a suit O.S.No.561 of 2002 before the Principal Senior Civil Judge, Kakinada and another suit O.S.No.18 of 2002 before the IV Additional District Judge, Kakinada concerning various issues relating to CBCNC (No.16/48-49) and the Court at Visakhapatnam had no jurisdiction to entertain any petition under Section 23 of the A.P. Registration Act, 2001. The said I.A. was dismissed on 17.01.2005.

10. Sri S.M. Kanta Raju filed CRP.No.791 of 2005 before this Court which allowed it on 19.09.2006 and directed the papers in the O.P. to be returned for presentation in the proper Court.

11. This was questioned in SLP.No.19512 of 2006 and the order of the High Court was stayed by the Supreme Court on 04.12.2006. In the meantime, the papers in the O.P. were returned on 04.11.2006.

12. Later, the 4th respondent filed I.A.No.11 of 2007 contending that the order dt.04.11.2006 returning the O.P. papers be set aside. This was dismissed on 06.07.2007.

13. He questioned this in C.R.P.No.4471 of 2007 and the said C.R.P. was allowed by this Court on 05.11.2015 holding that as long as the stay granted by Supreme Court continues, the O.P. cannot be returned. Thereafter, there is no dispute that the papers of the O.P. were re-presented and the O.P. is pending on the file of the said Court.

14. On 10.03.2015, the Dasari Yacob got a legal notice issued through its Advocate to the 2nd respondent alleging that the said permission was obtained by respondent nos.5 and 6 by suppressing the fact that O.P.No.13 of 2004 (the order in which was the basis on which lease deed dt.15.09.2004 was executed) was returned on 04.11.2006 by the said Court, and such permission was obtained for making construction by respondent nos.5 and 6 by managing the officials of 2nd respondent. In the said notice, the petitioner requested the Commissioner of 2nd respondent to enquire into the matter, cancel the approved plans and also to stop construction activity. His application is referable to Sec.450 of the Greater Hyderabad Municipal Corporation Act,1955 (for short 'the Act').

15. In the said legal notice it is also alleged that in an order dt.19.09.2006 in C.R.P.No.791 of 2005, this Court, at the instance of S.M. Kanta Raju also confirmed the order of IV Additional District Judge, Visakhapatnam and directed that the papers relating to O.P.No.13 of 2004 be returned to 4th respondent for the purpose of presentation before the appropriate Court and that the said order is subject mater of a Special Leave Petition, SLP.No.19512 of 2006 filed

by 4th respondent before the Supreme Court of India which had stayed on 04.12.2006 the judgment of the High Court. The petitioner's contention in the legal notice was that since the O.P. was returned on 04.11.2006 itself before the date of the order passed by the Supreme Court on 04.12.2006, the interim orders passed in the O.P. cease to have any force and on that basis, permission could not have been granted by 2nd respondent on 1.8.2012.

16. When the said legal notice dt.10.03.2015 was not being responded by 2nd respondent, the petitioner filed W.P.No.11793 of 2015 before this Court.

17. By order dt.19.06.2015, this Court disposed of the Writ Petition directing the 2nd respondent to consider the contents of the legal notice dt.10.03.2015 submitted by petitioner and pass appropriate orders as per law. It also directed that notice to be given to respondent nos.4 to 6 and they be heard before passing appropriate orders.

18. Thereafter, the respondent nos.4 to 6 filed submissions on 03.10.2015 before the 2nd respondent contending that the 4th respondent is the Chairman of petitioner-Association as per the election conducted in the presence of Advocate-Commissioner pursuant to the orders in I.A.No.25 of 2004 in O.P.No.13 of 2004 of the IV Additional District Judge, Visakhapatnam. The 4th respondent also filed certified copy of report of the Advocate-Commissioner

mentioning that the 4th respondent is Chairman of petitioner-Association. They contended that Sri Dasari Yacob, did not file even a single document in support of his claim as Chairman of petitioner-Association. They contended that property tax was paid by 4th respondent as Chairman till the property was leased out to respondent nos.5 and 6 and the latter are not concerned with the internal disputes in the petitioner Association, since they had entered into a lease with petitioner represented by 4th respondent as Chairman.

19. The impugned order dt.16.12.2015 was then passed by the 2nd respondent. He held that respondent nos.5 and 6 had applied for construction of a hotel building on 09.02.2012; after perusing the ownership documents and lease deed furnished by respondent nos.5 and 6, the matter was referred to the Standing Counsel of the 2nd respondent-Corporation; he opined on 15.05.2012 that the 2nd respondent can issue proposed plan in the name of the lease-holder; the matter was then placed before the Technical Committee and it recommended for approval; and accordingly, permission was granted to respondent nos.5 and 6 on 01.08.2012 for construction of the building. He held that the 4th respondent submitted documentary evidence in proof that his election was held as per the orders of the Civil Court in I.A.No.25 of 2004, but Sri Dasari Yacob did not furnish any evidence that he was elected as the Chairman of the petitioner-Association, that the matter is pending before the High Court in CRP.No.4471 of 2007, and since there is no evidence to suggest that

election of 4th respondent as Chairman is illegal, the request of Sri Dasari Yacob in his notice dt.10.03.2015 for cancellation of building plan is rejected.

20. Assailing this proceeding of 2nd respondent, the Writ petition is filed.

THE INTERIM ORDER

21. On 29.01.2016, this Court admitted the Writ Petition and granted interim suspension of the building permission dt.01.08.2012 granted to petitioner, and restrained respondent nos.5 and 6 from proceeding with any construction in the land. It noted that Sri Dasari Yacob contended that building permission was obtained after the O.P. was returned pursuant to the order of the High Court in CRP.No.791 of 2005 and before the Supreme Court granted stay and that 4th respondent appeared to have given away valuable immovable property of the petitioner-Association for a pittance of lease amount of Rs.5,000/- per month for ninety-nine years.

22. To set-aside this above order, the respondent nos.4 to 6 filed WVMP.No.757 of 2016.

CONTENTIONS OF PETITIONER

23. According to Dasari Yacob, deponent of the affidavit filed on behalf of petitioner, the 4th respondent, styling himself as Chairman of petitioner-Association, entered into a lease with respondent nos.5 and 6 on 15.09.2004 for a period of ninety-nine years; that 4th respondent

claimed to have got elected in an election which was held on 17.01.2004 pursuant to orders passed in I.A.No.25 of 2004 in O.P.No.13 of 2004 by the IV Additional District Judge, Visakhapatnam; and on the basis of the said lease granted in favour of respondent nos.5 and 6, they had applied for permission to make construction in the above property and obtained the same on 01.08.2012 in B.A.No.10567/2012/ACP-III from 2nd respondent.

24. Sri Dasari Yacob contends that he was appointed as Chairman of the petitioner-Association by the Executive and Finance Board of petitioner since the then incumbent resigned from the Office of Chairman of petitioner-Association; he was elected as Chairman in the year 2007 by the governing body and later re-elected in the year 2012 for five years in a meeting held at Pamarru, Krishna District; it is his duty and responsibility to protect the Trust properties and he had filed some cases in the Courts to protect the properties of petitioner-Association and succeeded. He alleged that he visited the schedule property in the end of year 2014, noticed construction activity, and on verification came to know that respondent nos.5 and 6 started constructing a hotel after obtaining permission. Since he was of the opinion that respondent nos.4 to 6 played fraud and got permission, he approached the 2nd respondent to cancel the said permission.

25. The principal contention of Sri Dasari Yacob is that the 4th respondent was not the Chairman of petitioner-Association at the time when the lease was entered into and so, the lease itself is illegal; and

on that basis, the 2nd respondent ought to have cancelled the permission granted to respondent nos.5 and 6 on 01.08.2012 for construction of hotel building on ground of fraud and misrepresentation.

26. Several other contentions on the correctness and the claim of 4th respondent as Chairman of the petitioner's governing body are raised which it is not necessary to go into.

CONTENTIONS OF RESPONDENT NO.4-6

27. The respondent no.s 4-6 contended that Sri Dasari Yacob was not the Chairman of the petitioner-Association. They contended that petitioner is seeking adjudication of private disputes with respect to the Chairmanship of petitioner-Association by the 2nd respondent; the 2nd respondent is not competent to decide the said issue; the claim of Sri Dasari Yacob rests on the outcome of the adjudication as to whether the 4th respondent is the Chairman or the deponent in the Writ Petition is the Chairman; and such questions of fact cannot be adjudicated by 2nd respondent or by this Court in these proceedings.

28. Reference is made by respondent nos.4 to 6 to the deposition of Sri Dasari Yacob as DW.2 in O.S.No.38 of 2004 on the file of IV Additional District Judge with regard to the property of the petitioner-Association in respect of T.S.No.75, Ward No.90, Waltair Ward, and the rejection by the said court of Sri Dasari Yacob's contention that he was elected as a Chairman of petitioner-Association from 2007-2012

on the ground that no minutes of proceedings were filed evidencing the convening of a convention and the election of Sri Dasari Yacob as Chairman. It is specifically contended that O.S.No.38 of 2004 which had been filed by 4th respondent was decreed recognizing the 4th respondent as Chairman of petitioner-Association.

29. It is contended that by virtue of the order passed by this Court on 05.11.2015 in CRP.No.4471 of 2007, the O.P. stood restored to the file of the Court and the order in I.A.No.23 of 2004 also stood restored consequently.

30. It is contended that in view of the same, there is no illegality committed by 4th respondent in executing the lease deed in favour of respondent nos.5 and 6 on 15.09.2004 and in the 2nd respondent granting permission for making construction on 1.8.2012 to respondent nos.5 and 6 on the basis of a registered lease deed dt.15.09.2004. It is alleged that 2nd respondent had no jurisdiction or authority to consider the objections of Sri Dasari Yacob and is not competent under the provisions of the Hyderabad Municipal Corporation Act, 1955, while dealing with an enquiry under Section 450 of the said Act, to go into the issues raised by Sri Dasari Yacob.

31. It is asserted that construction is complete up to the stage of laying slabs and brick-work, that further construction is stayed and grave and irreparable loss would be caused to respondent nos.5 and 6 if the interim order is continued. It is pointed out that while granting

interim order this Court was swayed by contents of the lease deed which itself was not under challenge before this Court, and therefore, the order passed cannot be allowed to stand particularly since respondent nos.5 and 6 have taken loans to carry out the construction of the hotel building in the subject land and the interest liability is increasing day by day.

CONTENTIONS OF 2ND RESPONDENT

32. The Standing Counsel for 2nd respondent Sri S. Laxminarayana Reddy, supported the proceedings dt.16.12.2015 of 2nd respondent and contended that issues of the nature raised by Sri Dasari Yacob cannot be decided by the 2nd respondent exercising power under Section 450 of the Hyderabad Municipal Corporation Act, 1955, and the petitioner cannot seek a decision on the said issues in this Writ Petition either, when the SLP referred to above is pending in the Supreme Court. He contended that there is no illegality in the order passed by the 2nd respondent warranting interference by this Court under Article 226 of the Constitution of India.

33. I have noted the submissions of both sides.

THE CONSIDERATION BY THE COURT

34. Section 450 of the Act states :

“450. Power of Commissioner to cancel permission on the ground of material misrepresentation by applicant : -

If at any time after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 428 or 433 or in the further information if any, furnished, he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.”

35. Sec.450 confers power on the 2nd respondent to cancel a permission granted by him if he is satisfied that such permission for making construction was obtained by playing fraud and misrepresentation.

36. The admitted facts are that the lease deed was executed by 4th respondent in favor of respondent No.s 5 and 6 on 15.9.2004. The basis for execution of this deed is the Advocate Commissioner's report in I.A.No.25 of 2004 in O.P.No.13 of 2004 of the Court of IV Additional District Judge, Visakhapatnam wherein it was mentioned that 4th respondent was elected as Chairman of petitioner Trust in a convention convened by the Advocate Commissioner. Permission had been granted by 2nd respondent to respondent no.s 5 and 6 on 1.8.2012. The petitioner's application to 2nd respondent under Sec.450 was made through a legal notice dt.10.3.2015, almost two and a half years after permission was granted.

37. Admittedly, the 4th respondent filed I.A.No.11 of 2007 contending that the order dt.04.11.2006 returning the O.P. papers be set aside. This was dismissed on 06.07.2007. He questioned it in

C.R.P.No.4471 of 2007 and the said C.R.P. was allowed by this Court on 05.11.2015 holding that as long as the stay granted by Supreme Court in the SLP continues, the O.P. cannot be returned. Thereafter, the papers of the O.P. were re-presented by 4th respondent and the O.P. is restored and is pending on the file of the said Court.

38. It may be that on 01.08.2012, the date when permission was granted by 2nd respondent, technically the O.P. was not pending on the file of IV Additional District Judge, Visakhapatnam. But in view of the order dt.04.12.2006 in SLP.No.19512 of 2006 staying the order dt.19.09.2006 in CRP.No.791 of 2005 (wherein this Court had directed the IV Additional District Judge, Visakhapatnam to return the O.P. papers), and the order dt.05.11.2015 in CRP.No.4471 of 2007 passed by this Court holding that the O.P. papers cannot be returned as long as the stay granted in the SLP continues, the O.P. is always deemed to have been pending on the file of the said Court and I.A.No.25 of 2004 is also deemed to be pending even in the interregnum period from 19.09.2006 (when C.R.P.NO.791 of 2005 was allowed) / 04.11.2006 (when the O.P. papers were returned) *till* 05.11.2015 (when C.R.P.No.4471 of 2007 was allowed). This is on account of legal fiction.

39. So it cannot be said that there is any fraud or misrepresentation on the part of respondent nos.4 to 6 in obtaining building permission from 2nd respondent.

40. Moreover, the question as to who was lawfully elected as Chairman of petitioner-Association is a matter to be decided by the competent Forum subject to the result of the S.L.P. pending in the Supreme Court and the 2nd respondent is not conferred any jurisdiction to decide it under Section 450 of the Act.

41. In any event, Sri Dasari Yacob had issued legal notice on 10.03.2015 to 2nd respondent invoking Section 450 of the Act about two-and-a-half years after permission was granted on 01.08.2012. He did not give any valid explanation for the delay in doing so. It is not as if the constructions being made by respondent no.6 were not visible by then. Dasari Yacob cannot say that only in December ,2014 he noticed the structures. By the date of issuance of such legal notice, the respondent nos.5 and 6 would have expended considerable money for making construction. According to 5th respondent, he had completed all the slabs and had borrowed money by taking loans to make the construction. Thus, the laches on the part of the petitioner in initiating proceedings under Section 450 of the Act before the 2nd respondent, also disentitle the petitioner to any relief in the Writ Petition.

42. The contents of the lease deed, and in particular, the quantum of rent are not the subject matter for consideration either before 2nd respondent or in the O.P. It is not open for the petitioner to raise any contention on this issue under Article 226 of the Constitution of India since this issue cannot be any ground to cancel construction permission under Section 450 of the Act.

43. I am in complete agreement with the reasoning of the 2nd respondent in the impugned order in rejecting petitioner's contention that the construction permission granted on 01.08.2012 to respondent nos.5 and 6 be cancelled on the ground of fraud or mis-representation.

44. For the aforesaid reasons, I do not find any merit in the Writ Petition. Therefore, the Writ Petition is dismissed with costs of Rs.2000/- to be paid to 6th respondent by petitioner, and the interim order dt.29.01.2016 in WPMP.No.3132 of 2016 in W.P.No.2492 of 2016 is vacated.

45. As a sequel, miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-08-2016

Ndr/*

