

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.16832 OF 2015

AND

CONTEMPT CASE No.1807 OF 2015

Dated:11.11.2016

Between:

Dawar Hussain, S/o. Saheb Hussain,
Aged about 50 years, Occ: Chicken
Business, R/o.10-9155, Shop No.1,
Varni X Road, Nizamabad and others

.. Petitioners

And

The State of Telangana, rep., by its
Principal Secretary, Municipal Secretary,
Municipal Administration, Secretariat
Buildings, Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.16832 OF 2015

AND

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COMMON ORDER:

The Writ Petition is filed challenging the notices issued under Sections 452(2) and 461(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act'), as regards the construction made in the subject property.

2. The petitioners claim that they are the tenants of the subject property, which belongs to Sri Mohd. Valiuddin, who purchased the same by a registered sale deed, dated 04.06.2010, from Smt. Shabana Begum. Their grievance is that though there is no illegal construction, the impugned notices are issued without following the due process of law.

3. This Court, by interim order, dated 12.06.2015, directed the respondents not to demolish the shops of the petitioners in the subject property.

4. Alleging that the said interim order was violated and on 14.09.2015 the subject property was demolished, Contempt Case No.1807 of 2015 is filed.

5. On verification of the record, it was found that though the interim order passed on 12.06.2015 was within the knowledge of the Municipal Authorities, demolition was made in violation of the same. The then incumbent, the Commissioner, filed an additional affidavit and while accepting his lapse in not taking due diligence, stated that the order passed by the Court was not within

his notice and he was genuinely not aware of the said order. Action was initiated against the concerned Junior Assistant, who was dealing with the subject, for not bringing it to his notice. He tendered his unconditional apology and also stated that he would be diligent in dealing with the orders of this Court.

6. Even, at this stage, this Court was not informed of the filing of earlier Writ Petition with regard to the very same subject property and passing of orders by this Court.

7. On the previous date of hearing, the Court was informed that a vacate petition was filed and directions were issued. Having regard to the said statement, this Court directed to list the Vacate Petition also.

8. Today, the Writ Petition along with the Vacate Petition and the Contempt Case are listed. With the consent of learned counsel for the parties, the Writ Petition is taken up for consideration and is being disposed of.

9. One L. Limbandri filed W.P.No.812 of 2007 alleging that Smt. Shabana Begum, the 3rd respondent in the said Writ Petition, from whom the owner of the petitioners herein purchased the subject property, made illegal construction in the subject property, whereas the Municipal Authorities have not taken any action against the said construction. It appears that on a complaint made by the petitioner therein, the Government called for remarks from the respondent - Corporation and the same were furnished to it. The Government was informed that permission obtained by respondent No.3 therein was rejected. In view of the

same, the Court observed that if respondent No.3 is still proceeding with the construction, the petitioner therein could either file a suit or bring the same to the notice of the respondent – Corporation. Accordingly, by order dated 29.10.2009, the said Writ Petition was disposed of giving liberty to the petitioner therein to make a representation to the respondent – Corporation on the alleged construction being made by the 3rd respondent therein, and in such a case, the respondent – Corporation, the 2nd respondent therein was directed to take action in accordance with law.

10. The counter affidavit filed in the Contempt Case is silent as to the steps taken till 2015 and only in the year 2015, the proceedings for taking action are set-in-motion. The notice challenged in the present Writ Petition is a consequence to the said action. The petitioners, being tenants, ought to have been aware of these legal proceedings. They did not disclose the earlier litigation and pending action that is subjected to be taken by the respondent – Corporation and pleaded as if action was taken for the first time in the year 2015.

11. As noticed by this Court, in the earlier Writ Petition, when, admittedly, no building permission was granted to the then owner of the property i.e., Smt. Shabhana Begum, the subsequent purchaser cannot acquire the better title and right to the premises when the original construction itself is illegal and liable to be demolished. More so, no right can vest in a tenant to contest the action initiated by the respondent - Corporation.

12. In view of the admitted fact that no building permission was granted to the original owner, I do not see any

illegality in the notice issued on 06.06.2015, impugned in the Writ Petition, warranting interference by this Court. The Writ Petition is therefore liable to be dismissed and the same is accordingly dismissed. There shall be no order as to costs.

13. The then incumbent, the Commissioner, ought to have been careful in verifying the orders of the Court and taken suitable steps for seeking vacation of the said order and could not have acted contrary to the directions of the Court. However, having regard to the conduct of the petitioners, who did not disclose earlier litigation and the fact that the construction was made unauthorisedly, no equities can accrue to them to contend that the demolition was made illegally, moreover, when this Court granted liberty to the respondent - Corporation to take legal course of action as the Act vests such power in it.

14. In view of the peculiar facts of this case, the apology tendered by the then incumbent, the Commissioner, is accepted and the Contempt Case is accordingly closed. However, he is warned to be careful in future and if similar conduct comes to the notice of the Court, the same would be taken seriously.

Miscellaneous petitions, if any, filed in the Writ Petition and Contempt Case shall stand closed.

P. NAVEEN RAO, J

Date:11.11.2016

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