

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.32351 & 41345 of 2016

Date: 15.12.2016

WP No.32351 of 2016:

Between:

Sunkara Sambasiva Rao S/o Satyanarayana,
Aged 46 years, Occu: Business, R/o.9-786,
Nizampeta, Bommamaleda, Machilipatnam,
Krishna District, A.P.

.....Petitioner

and

The State of Andhra Pradesh, rep.by its
Principal Secretary, Municipal Administration
Department, AP Secretariat, Hyderabad and
others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

Heard Sri A.Sudarshan Reddy, learned senior counsel holding for Ms.T.Suneetha, counsel on record for petitioner in W.P.No.32351 of 2016 and for respondent no.4 in W.P.No.41345 of 2016, learned Government Pleader for Municipal Administration (AP) for respondent No.1, learned Government Pleader for Revenue (AP) for respondent No.2, Sri Nimmagadda Venkateswarlu, learned standing counsel for respondent No.3 in both writ petitions and Sri G.Rama Gopal, counsel for respondents 4 and 5 in W.P.No.32351 of 2016 and for petitioners in W.P.No.41345 of 2016. With their consent writ petitions are finally disposed of. For convenience, parties are referred to as arrayed in W.P.No.41345 of 2016.

2. Subject matter of controversy in both writ petitions is construction of a building with steel structure and laying asbestos sheets over the steel structure by 4th respondent. Petitioners contend that it is intended for commercial purpose and same is not permissible in the residential zone.

3. Learned counsel for petitioners submits that 4th respondent obtained building permission to construct an RCC residential building with ground + first floor, but has deviated from the building permission granted and undertaking construction of commercial building with steel framed structure as industrial shed to use for commercial purpose and the same is *ex facie* illegal. By referring to the provisions under Sections 201, 211, 217 &

228(1)(b) of the A.P.Municipalities Act, 1965, learned counsel would submit that when the action of the 4th respondent in undertaking construction in deviation of the building permission granted is illegal, Municipality ought to have taken action to remove such construction. He further submits that 4th respondent has obtained electrical supply for commercial purpose and this would show that his intention is to use the shed for commercial purposes. He would submit that there is no express denial of their contentions on undertaking commercial activity in residential area.

4. By placing reliance on the decision of this Court in **Saddi Narasimha Reddi v. Commissioner (Now Special Officer) Municipal Corporation of Hyderabad, with his office at Daralshifa, Hyderabad**¹, he submits that no illegal activity can be permitted and the Municipality cannot be restrained from undertaking demolition of illegal construction made and any such relief granted would amount to violating the law.

5. Learned standing counsel submits that employees of the Municipality have inspected the building and noticed that there are no deviations with reference to setbacks and height. However, learned standing counsel would fairly submit that though permission was for construction of RCC building, petitioner has constructed steel framed structure and laid the steel/aluminum sheets as roof. Such deviation is not seriously taken note by the Municipality since for various reasons, the individuals resort to construction of a building not by way of RCC slab, but by way of steel sheds and lay steel sheets/asbestos sheets as roof. He would

¹ 1981 (1) Andhra Weekly Reporter 166

further submit that permission granted was only for residential purpose and Municipality does not permit the 4th respondent to use the building for any other purpose.

6. Learned senior counsel appearing for 4th respondent submits that 4th respondent has not deviated from the building permission granted to him with reference to the setbacks and height. Due to financial constraint, 4th respondent is undertaking construction of steel framed building with asbestos sheets as roof cover and it would be utilized for residential purpose to locate his workers and will not be used for commercial purpose. The 4th respondent has categorically stated in his counter affidavit that he would not deviate from the zonal requirements though in the same locality commercial activity has come up.

7. He would submit that as long as the setbacks and height restrictions are observed, no neighbour can have a grievance. According to the learned senior counsel, no inconvenience is caused to the petitioners and are not affected by such construction. Neighbour can have a grievance only if, by virtue of some illegal construction made by the owner of the property, inconvenience or hardship is caused to the neighbour. Whether petitioner is undertaking construction of RCC building or a corrugated steel structure with ACC sheets as roof, cannot be the concern of the neighbours. No case is made out by the petitioners as to how they are affected by such construction.

8. The facts on record would disclose that though there is a deviation in the construction as per the original sanctioned plan, the setback norms as well as height norms are not violated and

construction is made within the permissible limits. Thus, the only issue is whether it is permissible to the petitioners to undertake construction of corrugated steel framed structure with ACC sheets as roof when building permission was granted only for RCC structure. Though, this deviation is noticed by the Municipality, no action is taken by the Municipality.

9. In paragraph-11 of the counter-affidavit, 4th respondent deposed as under:

“In fact, the 4th respondent is making construction in accordance with the sanctioned plan ***without deviating from the land use as granted by the Municipal authorities*** at the time of approval zoning regulations and master plan.”

10. Learned standing counsel also circulated the documents including a letter addressed by the 4th respondent to the Commissioner of Municipality on 12.09.2016. The contents of letter read as under:

“To
The Commissioner,
Machilipatnam Municipality,
Machilipatnam.

Sub: Information about the Temporary Construction at Ward
No.7 and Door No.302 & 303.
Ref: Reference against your Provisional Order dated 09.09.2016.

Respected Sir,

“This is in reference to your provisional order dated 09.09.2016; I hereby inform you that the construction which we made at Door No.7/302, 303 is purely for temporary construction with ACC roof sheeting for our workers residential purpose only until to make our permanent construction according to the building permit order issued by your good self. However, I hereby undertake you that the permanent RCC construction will be considered and constructed according to the building permit order leaving all four sides setbacks spaces.

I hereby undertake you that there will not be any inconvenience to our neighbours, pedestrians etc., and I will remove all the

temporary construction before end date of our building permit order. And also hereby undertake you that there will not be dealt any commercial activities in that particular premises. Therefore, I hereby request you to stop further proceedings against the provisional order dated 09.09.2016.

Your kind consideration in this regard will be highly appreciated.

Thanking you,

Yours faithfully,

Sd/-
(Sunkara Sambasiva Rao)"

11. In the decision relied upon by the learned counsel for petitioners, the issue was on the action initiated by the Municipal Corporation for alleged deviations in the setbacks and making illegal construction of the building and this Court upheld such action.

12. Though the structure made appears to look as intended for commercial activity, in view of the categorical statement of the 4th respondent that he would utilize the structure only for residential purpose, there is no reason to disbelieve the said statement and to hold that the construction activity taken up by the 4th respondent is for commercial purpose.

13. In view of the categorical undertaking given by the 4th respondent and the fact that there were no deviations, it cannot be said any more that petitioners are affected by construction of the subject building by the 4th respondent.

14. The only issue now remains is whether the 4th respondent is competent to undertake construction of the building as in corrugated steel frame structure with asbestos sheets as roof when original building permission granted was only for RCC structure. Learned senior counsel submitting that due to financial

constraints he had to undertake such construction and 4th respondent is intending to apply for change in the building plan and to seek approval of the construction taken up by him. Learned senior counsel submits that now building permission applications are accepted through website only and the online portal is not accepting the application for conversion of earlier building plan to that of steel framed structure and 4th respondent can only make physical application to the Municipality requesting to validate different mode of construction made by him. The relevant provision relied upon by the counsel for petitioners would make it clear that the construction has to be strictly in accordance with the building plan and no deviation should be permitted and admittedly, there is deviation in the nature of construction made. Thus, subject to the 4th respondent applying for change of building plan with reference to nature of construction and for the respondent-Municipal Corporation to consider such application, the 4th respondent is directed not to undertake any further construction till such permission is granted.

15. The writ petitions are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 15.12.2016
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