

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 11235 of 2016

ORDER:

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Declaring the action of the third respondent in issuing notice/order No.Rc./A2/153/2011, dated 29.03.2016 directing the petitioner to stop construction of the cinema theatre is subject matter of challenge in this writ petition.

The facts which lead to filing of the present writ petition are as under:

The petitioner is owner and possessor of about 1000 square yards of site in R.S.No.514/1A 37, which was originally purchased by his wife from one Ch.Bhavani. Subsequently, the said property was gifted to the petitioner under registered gift deed dated 03.11.2010. It is said that the second respondent i.e. Joint Collector and Licencing Authority, Krishna District, after being satisfied with the reports given by all the concerned, granted licence for proceeding with the construction. The fourth respondent herein raised an objection with regard to construction of a cinema theatre on the ground that the same is in contravention of Andhra Pradesh Cinemas (Regulation) Rules, 1970. The said objection came to be raised when the construction was coming to an end. At that point of time, the second respondent cancelled the permission granted to the petitioner without issuing any notice. Challenging the same the petitioner filed W.P.No.11707 of 2013, wherein this Court initially granted interim suspension and thereafter allowed the writ petition. It is also said that without conducting any enquiry as directed by this Court, the third respondent issued a notice dated

29.03.2016 directing the petitioner to stop the construction in view of the pendency of the writ petition, failing which necessary legal steps will be taken to stop the construction. Aggrieved by the same, the present writ petition came to be filed on various grounds.

A counter came to be filed by the fourth respondent denying the averments made in the affidavit filed in support of the writ petition. According to them, in the year 1977 an extent of Ac.20.75 cents of tank poramboke land situated in R.S.No.514/1A of Nandigama Village was assigned to Field Labour Co-operative Society on market value. The aforesaid society allotted various extents of land in favour of its members. It is said that on 12.11.2001 one Kanthamma, executed a sale deed in favour of one Mohd. Salar, who was in possession of the same on the said date. Similarly on the same day two other persons executed two sale deeds in respect of lands admeasuring Ac.0.03 cents and Ac.0.04 cents in the said survey number in favour of Mohd. Salar. On 13.02.2003 Mohd. Salar is said to have executed a sale document in favour of Shaik Sairunnsa Begum selling Ac.0.09 cents for a sale consideration of Rs.60,000/-. It is further stated that on 17.02.2003 Smt. Shaik Sairunnisa Begum executed a sale deed in favour of Dastagiri, who is the President of the fourth respondent, selling the land admeasuring Ac.0.05 cents for a consideration of RS.50,000/- . From the said date the property vested with the fourth respondent. Further on the same day, Sairunnisa Begum gifted the remaining land in favour of the fourth respondent. After obtaining permissions for construction of a mosque from the Executive Officer, Nandigama and after obtaining sanction of Rs.2.00 lakhs from the District Collector, Krishna, a mosque was constructed and since 2003 the fourth respondent claims to have been offering prayers to its musallis in the said mosque.

Insofar as the construction of cinema theatre is concerned, it is said that the petitioner herein made an application for issuance of no objection certificate for construction of cinema theatre in the year 2011 which was accorded on 01.03.2012. Having regard to the nature of transaction referred to above and since the land is assigned to landless poor persons, he submits that the petitioner has no title over the said property. He further stated in the counter that pursuant to an order, a joint Inspection was conducted, according to which the impugned proceedings came to be issued. It is urged that since the theatre came to be constructed in total violation of Rule 8-B (2) of the Andhra Pradesh Cinemas (Regulation) Rules, 1970, the petitioner is not entitled for no objection certificate for construction of cinema theatre as it is came to be found within a distance of 182 meters from the place of worship.

Learned counsel for the petitioner mainly submits that the survey conducted pursuant to an order of this Court, which formed the basis for passing the impugned order, was conducted behind the back of the petitioner and no opportunity of presenting his case was afforded before passing the impugned order. He submits that a reading of the impugned order clearly indicates that it came to be passed without application of mind to the facts in issue. It is his case that once an order is set aside by this Court in W.P.No.11707/2013 earlier order of granting permission gets revived and as such the authorities could not have passed an order stopping further construction. The same is opposed by Sri S. Ashok Anand Kumar, learned counsel appearing for respondent No.4 stating that construction of a cinema theatre is contrary to Rule 8-B (2) of the Andhra Pradesh Cinemas (Regulation) Rules, 1970 since the authorities found that the theatre was at a distance

of only 20 meters from the place of worship. Having regard to the fact that the petitioner became the owner of the land in the year 2003 itself and a mosque was constructed in the very same year, the plea of the petitioner that there is no illegality in constructing theatre in view of the permission granted by the authorities, cannot be accepted.

In order to appreciate the rival arguments it would be necessary to refer to the order passed by this Court in W.P.No.11707 of 2013, dated 05.01.2016 which is as under:

“As the main ground on which a challenge was laid to the impugned order was that the petitioner was not given an opportunity of hearing before his ‘No objection Certificate’ was cancelled, this Court sees no reason to enter into the dispute as to the actual distance between the proposed theatre and the existing mosque. It is for the Joint Collector and Additional District Magistrate, Krishna, Machilipatnam, to look into this aspect of the matter. As it is an admitted fact that the petitioner was not given an opportunity of hearing prior to cancellation of his ‘No Objection Certificate’ under the impugned order dated 22.02.2013, the said order is set aside. The matter is remitted to the file of the Joint Collector and Additional District Magistrate, Krishna, Machilipatnam, for consideration afresh of the issue. The authority shall hear both the petitioner as well as respondents 3 and 4, cause a joint inspection as to the actual distance between the proposed theatre and the mosque and if it is found to be within the prohibited parameters, take appropriate action in accordance with law. This exercise shall be completed expeditiously and in any event, not later than three weeks from the date of receipt of a copy of this order. The writ petition is allowed to the extent indicated above.”

A reading of the above would indicate that the order dated 22.02.2013 was set aside on the ground that no opportunity was given to the petitioner before passing an order canceling the no objection certificate. Further, this Court while remitting the matter

to the Joint Collector for fresh consideration of the issue, directed the authority to hear both the petitioner as well as respondents 3 and 4 and cause a joint inspection as to the actual distance between the proposed theatre and mosque and if it is found within the prescribed parameters to take appropriate action. Therefore, the concerned authority apart from hearing the petitioner and respondent Nos.3 and 4 therein has to make a joint inspection meaning thereby that it should be in the presence of the petitioner and respondent Nos.3 and 4 therein. It is also to be noted that writ petition was allowed to the extent referred to above. Thereafter, the impugned order came to be passed on 29.03.2016 as if the writ petition is still pending consideration and that a report of joint inspection has to be submitted to the Court. In view of the above the authorities directed the petitioner to stop construction of the theatre.

The impugned order does not anywhere indicate about the joint inspection conducted pursuant to the order passed by this Court and also as to whether the theatre was within the prescribed distance from the place of worship. However, learned counsel for the respondents placed on record a report of the Tahsildar, dated 23.01.2016 showing compliance of the order passed by this Court in W.P.No.11707 of 2013, wherein it was mentioned that survey was conducted and it was found that the distance between the cinema theatre and wall of the mosque is about 102 links or 20 meters. It was also mentioned that the mosque was constructed prior to the construction of the cinema theatre and that if the cinema hall is constructed there is every possibility of communal disturbances. Further, a perusal of the proceedings dated 23.01.2016, nowhere indicate the presence and participation of the petitioner during the said survey/inspection. As referred to earlier,

there is no reference to the survey/inspection being conducted by the Tahsildar in and on the other hand, it refers to passing of the impugned order in view of the pendency of the writ petition, which is not the purport of the order passed by this Court.

Having regard to the circumstances stated above, the order under challenge is set aside and as directed by this Court in W.P.No. 11707 of 2013 the authorities shall conduct a inspection/survey in the presence of the petitioner herein as well as the representative of the fourth respondent; consider the objections raised by them and pass appropriate orders in accordance with law as early as possible, preferably, within a period of two (02) weeks from the date of receipt of a copy of the order.

With the above direction, the writ petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

12.07.2016
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