

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.19244 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

“...to issue a Writ, order or direction, more particularly one in the nature of a Writ of Mandamus declaring the action of respondent 3 & 4 in permitting illegal construction being made by unofficial respondent 5 & 6 and not taking any action on the complaint of the petitioner except passing provisional and confirmation orders on paper as arbitrary, illegal and unjust and consequently direct second respondent to take action to demolish the illegal construction and also to take disciplinary action against respondent 3 & 4 and pass such other order or orders as this Hon'ble Court may deem fit and proper.”

2. I have heard the submissions of *Smt. K.V.Rajasree*, learned counsel appearing for the petitioner; learned Government Pleader for Municipal Administration and Urban Development appearing for the respondents 1 and 2; *Sri N.Praveen Kumar*, learned Standing Counsel appearing for the respondents 3 and 4; and, of *Sri S.Nageswara Reddy*, learned counsel appearing for the 6th respondent. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows: 'He is the owner of the building bearing House No.4-2-193/ 2, Chincholi Road, Tandur Town, Vikarabad District. He constructed his building in the year 1996. The respondents 5 and 6 (hereinafter referred to as 'the unofficial respondents') are his neighbours. They are the sons of his elder brother. The properties are partitioned in the year 1986 between the petitioner and his sister-in-law who is the wife of late G.Prakash, elder brother of the petitioner. It appears that the unofficial respondents applied for permission for construction of a building and that the permission has been

accorded by the 3rd respondent/ Municipal Council, represented by Municipal Commissioner, Tandur. The unofficial respondents started construction in complete deviation of the sanctioned plan and are making constructions without leaving any set backs. They were also digging deep foundations near the building of the petitioner to facilitate construction of a cellar illegally and without any permission. The petitioner objected for the said illegal construction. However, the unofficial respondents refused to proceed with the construction as per the sanctioned plan. The petitioner protested before the Municipal Commissioner stating that the sanctioned plan itself is wrong as 20 feet wide passage in between the plot of the petitioner and that of the unofficial respondents is also included and was taken into consideration and no passage has been shown in the plan of the unofficial respondents. The digging activity undertaken by the unofficial respondents and the construction undertaken by them is touching the wall of the building of the petitioner. The petitioner filed photographs to show that the sanction accorded for construction of building of the unofficial respondents is in violation of the building rules. The unofficial respondents 5 and 6 filed two separate applications for sanction of building permission by showing necessary set backs between the two buildings. However, they joined the two buildings and are proceeding with the construction without leaving any set backs and in deviation of the sanctioned plan. At least 5 feet set back from the boundary of the property in which construction is proposed shall be maintained while making the construction. However, in the present case, no set backs were left by the unofficial respondents while making constructions in their plot. Without leaving set backs, they used the complete passage in between the properties and made an encroachment on to the public road. They unauthorizedly and illegally constructed a cellar. The petitioner made several complaints from November 2016 onwards. He gave another final complaint, on 21.03.2017, setting forth all the facts and requesting to take action. The 4th respondent

was impleaded as an eo-nominee party by specifying his name in the cause title as he is the officer responsible for enforcing the rules and as he is acting as an agent of the unofficial respondents/ builders. The 4th respondent is threatening to demolish the building of the petitioner, which was constructed 21 years ago stating that if the petitioner interferes with the construction of the building of the unofficial respondents, he would take action against the petitioner. No action is taken by the official respondents either to stop the illegal constructions made and being made by the unofficial respondents or to demolish the same. After several complaints made by this petitioner, the petitioner was given letter No.G1/ 331/ 2017, dated 10.04.2017, stating that the 3rd respondent has given two provisional orders followed by two confirmation orders holding that the construction being made by the unofficial respondents 5 and 6 is illegal and a criminal case is filed through an advocate of the Municipal Council. Except stating on paper that provisional orders and final orders are passed and police case is to be filed, no action was taken either against the owner of the building or the officials concerned of the Municipality, who are responsible for allowing the illegal construction. In the year 2016, the petitioner approached this Court and filed W.P.No.43089 of 2016 and complained against the illegal constructions being made on the road by the unofficial respondents 5 and 6. This Court, by order, dated 21.12.2016, directed the 3rd respondent to conduct field inspection and file a report before this Court on the next date of hearing. This Court also directed to verify whether any deviation is made by the unofficial respondents therein and if so to stop construction till appropriate verification is done and report is filed. The 3rd respondent submitted a false affidavit before this Court stating that there is no encroachment on to the road. The respondents 3 and 4, who are turning a blind eye to the illegal constructions being made by the unofficial respondents 5 and 6, are hand in glove with the unofficial respondents. Mere passing of orders is not sufficient and the official respondents 3 and 4 are

required to take action against the illegal constructions being made by the unofficial respondents and they have to ensure strict implementation of the law and the rules. In complete disregard to their duties, the respondents 3 and 4 are directly and indirectly engaged in illegal construction activity of the unofficial respondents 5 and 6. This petitioner understands that respondents 3 and 4 collected huge amount from the unofficial respondents through the builder one of whom is a retired Municipal Engineer of Tandur Municipality by name Ananthaiah. The 2nd respondent who is the superior authority of the respondents 3 and 4 has remained as a mute spectator. Hence, the writ petition is filed.'

4. The 6th respondent filed counter alleging *inter alia* as follows:

'This respondent and the 5th respondent are the owners of the Plot Nos.4 to 7 and Plot No.42 in Sy.No.121 of Ward No.1 of Vingnapuri colony, Tandur Town. The mother of the 5th and 6th respondents, the petitioner, who is the brother-in-law of the respondents 5 and 6, and some others have purchased the land in Sy.No.121 to an extent of Ac.4.00 guntas in Chincholi Road, Tandur, in the year 1978, vide registered document No.3128/ 1978. The mother of the respondent filed O.S.No.54 of 1985 on the file of the Subordinate Court, Vikarabad, seeking partition of the property. The said suit was decreed as per compromise. Plot Nos.4 to 7 and 42 fell to the share of the mother of these respondents 5 and 6. The petitioner made constructions long back with complete deviations by encroaching into the land of the respondents 5 and 6. They made several complaints against the petitioner. When they tried to develop the plots by constructing a compound wall, the petitioner did not allow them; and, hence, they had not made any development in the above plots. The petitioner is not the owner of H.No.4-2-193/ 2, Chincholi Road, Tandur, Vikarabad District. The petitioner made Gift Settlement vide Deed bearing Document No.930/ 2003, dated 19.04.2003, in respect of the said house in favour of G.Krishna Kumari W/ o Ramesh; in the said deed, petitioner enhanced

extent of the said Plot Nos.S1 to S3 and 42/ a admeasuring 183 square yards to 300 square yards and encroached the land of these respondents. When the municipal authorities asked for submission of documents, he has not given proper reply with an evil and a *mala fide* intention to grab the properties of others. The respondents 5 and 6 gave complaint, dated 26.10.2006, to the Commissioner, Municipal Council, Tandur, complaining against the encroachment of the plot belonging to these respondents and erection of the cell tower on the encroached area. Further, the petitioner constructed his building in his total area and erected the lintels and lintel shades by encroaching into the plot of these respondents. The petitioner has no *locus standi* to file this writ petition. It is not true to say that the Municipal Commissioner without verifying the records granted permission in favour of the respondents 5 and 6. The 3rd respondent verified the documents submitted, got measured the plot physically and granted construction permission after satisfying himself. It is false to state that the respondents 5 and 6 are constructing the building without leaving the set backs. The site was inspected and it was found that set backs are maintained. In fact, the petitioner constructed the building without leaving any set backs; therefore, he cannot make allegations against the respondents 5 and 6. It is not true to say that the respondents 5 and 6 are making constructions without leaving the set backs and that there is encroachment on public road and that a cellar is being constructed illegally. The mater was referred to Municipal Standing Counsel for legal opinion. He gave an opinion stating that the issue of title will be decided by the Court of law and advised the petitioner to approach the Civil Court for redressal of his claim. The 3rd respondent intimated the same to the petitioner through letter No.G1/ 37/ 224/ 20015-2016, dated 01.12.2016. The petitioner concealed the said intimation given to him and filed the present writ petition to gain undue advantage. The petitioner is filing complaints and illegally dictating terms to the respondents 3 and 4 and blackmailing the

officials. The cases filed against these respondents are pending before the Judicial Magistrate of First Class, Tandur, Vikarabad District. The buildings were not constructed by occupying the property of any other persons and there was no encroachment onto the public road. Permissions were issued in the names of the owners of the plots only, that is, these respondents. The joining of the buildings will not affect any right of the petitioner and there was no deviation. The 6th respondent made an application to the Tandur Municipality for construction in Plot No.43 in Sy.No.121. After verification of the documents, the respondent Municipality sanctioned permission under File No.G/ 37/ 224/ 2015-16, dated 29.02.2016. As the combined application was submitted at the same time, and as the property vests in both of the respondents 5 and 6, the municipality issued two permissions. As the property is small, the respondents 5 and 6 had decided to construct the building jointly to save money. The building is being constructed as per the sanctioned plan and there is no deviation and encroachment. These respondents started construction in the month of May, 2016. The petitioner came to the site and stopped the work. The petitioner first made representation to the municipality; as the construction is as per the sanctioned plan and as the municipal authorities stated that no action can be taken, the petitioner approached this Court by filing W.P.No.43089 of 2016. This Court, by order, dated 21.12.2016, directed the respondent Municipality to file an affidavit after inspecting the building and verifying as to whether there was any encroachment. The respondent Municipality filed an affidavit, on 17.01.2017, stating that no encroachments are made by these respondents. Later, the petitioner approached the Court of the learned Judicial Magistrate of First Class, Tandur, and filed a private complaint against this respondent and ten others under various penal provisions. The Court referred the matter to the police for investigation. The police registered a case in Crime No.7 of 2017 for investigation and filed report, dated 29.5.2017, before the Court referring the

matter as 'civil in nature'. Accordingly, the private complaint is closed. The present writ petition is filed after closing the FIR by adding some other new allegations in order to harass these respondents and preventing them from proceeding with further constructions. Hence, the writ petition is liable to be dismissed.'

5. The averments in the counter affidavit filed on behalf of the 4th respondent, in brief, are as follows:

'After verifying the title documents and after inspecting the site physically only, this respondent has granted building permissions, vide G/ 37/ 224/ 2015-2016 & G/ 37/ 225/ 2015-2016, dated 29.02.2016. In fact, after receiving complaint from the petitioner, this respondent had inspected the site and found that the unofficial respondents are making constructions by clubbing the two buildings though permissions were taken separately for two buildings. Even the petitioner is also making constructions without leaving any set backs. Having identified the deviations in the constructions of both the parties, the Municipality has issued provisional orders, dated 03.01.2017, to the respondents 5 and 6 under Section 228(1)(2) of A.P. Municipalities Act, 1965, for submission of documents and explanation within seven days. Having not satisfied with their explanation, the Municipality issued confirmation orders under Section 228(3) of the Act. Further, the Municipality intimated them regarding prosecution before the competent Court of law. As per the directions of this Court in W.P.No.43089 of 2016, this respondent has measured the road and submitted a report to the Commissioner. As per the directions of this Court, this respondent conducted field inspection to know as to whether the respondents 5 and 6 made any constructions by encroaching upon the road or not. During the inspection, it is found that the respondents 5 and 6 are constructing one building by taking two separate permissions. Hence, provisional orders, dated 03.01.2017, were issued. Further, the Municipality initiated prosecution against the respondents 5 and 6 before the Court of

learned Judicial Magistrate of First Class, Tandur, Vikarabad District. This respondent never indulged in any act, which is against the rules and he never supported the builders, i.e., respondents 5 and 6. He never threatened the petitioner. The petitioner filed application under BRS Scheme and the same is under consideration. The petitioner, to settle his personal scores, is making allegations against the respondent Municipality. After the orders of this Court, dated 14.06.2017, the Municipality did not allow the respondents 5 and 6 to proceed with further construction. The petitioner is making false allegations against this respondent without any basis and only to defame and damage his career. Hence, the writ petition is liable to be dismissed.'

6. The 3rd respondent filed a counter affidavit. The averments of the counter, in brief, are as follows:

The respondent after verifying the title documents and after inspecting the site physically granted building permissions, dated 29.02.2016, vide G/ 37/ 224/ 2015-2016 and G/ 38/ 225/ 2015-2016, to the respondents 5 and 6. In fact, after receiving the complaint from the petitioner, this respondent had inspected the site and found that the unofficial respondents are making construction by clubbing two buildings though the building permissions were taken separately. It is undisputed that even the petitioner also constructed his building without leaving any set backs. Having identified the deviations in the constructions made by both the parties, the Municipality has issued provisional orders to the respondents 5 and 6 for submission of documents and explanation. Further, prosecution was also initiated against them. The 3rd respondent issued a show-cause notice to the respondents 5 and 6. As the matter became complicated, this respondent sought legal opinion from the Municipal Standing Counsel, Tandur, and he gave an opinion stating that the material allegations are regarding the title of the property and that the title will be decided by a Court of law and advised the petitioner to approach a civil Court for getting redressal of his claim. This respondent intimated the same to

the petitioner through letter, dated 01.12.2016. It is not true to state that the respondents 5 and 6 constructed the building by encroaching onto a public road and that the width of the public road was reduced to 14 feet from 33 feet. This respondent inspected the spot and submitted report that the road in Western side was not encroached and that set backs were not maintained as per the sanctioned plan. More over, the road is 33 feet width in the Western side of the building. It is false to allege that the respondents 3 and 4 maintained silence on the complaints made by the petitioner. This respondent issued show cause notice to the respondents 5 and 6 and they submitted reply. The allegation that respondents 1 to 3 are under the influence of respondents 5 and 6 is false. It is also not true to allege that respondents 3 and 4 had not taken any action and received huge amounts from the unofficial respondents through the builder who is a retired Municipal Engineer of Tandur Municipality by name Ananthaiah. The petitioner made such allegations without any proof and hence, he is liable to be prosecuted for defamation. For all these reasons, the writ petition is liable to be dismissed.'

7. Learned counsel for the parties made submissions in line with the respective contentions. From the pleadings, it is discernable that the petitioner is making complaints against the constructions being made by the respondents 5 and 6 stating that the said respondents having obtained building permits separately for constructing buildings in their respective plots are making one joint construction without constructing two separate buildings and that they also encroached into a road and made constructions by deviating from the approved plans and permissions accorded to them separately. On the contrary, the respondents 5 and 6 while stating that the petitioner made his constructions long time back *inter alia* submit that the petitioner's constructions were made by encroaching into the property of the respondents 5 and 6 and that the petitioner also made constructions without leaving the set backs and that the petitioner made constructions in his entire site and that his

lintel shades are encroaching into the properties of the respondents 5 and 6. Be that as it may, on inspections made, the official respondents 3 and 4 assert that respondents 5 and 6 are making a joint construction of one building having applied for separate building permits for two buildings and that while making the said constructions they did not encroach into road but made constructions in deviation of the building permits and that the petitioner also made his construction by deviating the building permits and that the petitioner applied for regularization of his construction and that provisional orders are passed so far as the construction of the respondents 5 and 6 and that criminal prosecution is also initiated against the said respondents and that appropriate action is already taken and further course of action is in progress. Learned counsel for the respondents 5 and 6 would submit that they would also take steps for regularization of their constructions as was done by the petitioner.

8. In the above stated backdrop, suffice if this writ petition is disposed of with appropriate directions and observations.

9. Accordingly, the writ petition is disposed of with the following directions:

- (i) The respondents 3 and 4 shall proceed in the matter with further procedural requirements as per law and take appropriate considered decision in the matter in accordance with law for removal of any constructions made by the respondents 5 and 6 in violation & in deviation of the building permits and the rules to see that the constructions made by respondents 5 and 6 are brought to a position, which is in accord with the building permits & approved plans granted to them and the rules applicable. It is needless to state that the respondents 3 and 4 shall in this regard continue to proceed in the matter in strict accordance with the procedure established by law.
- (ii) However, the respondents 5 and 6 are at liberty to follow the procedure established by law and seek regularization of the constructions made by them, if they so wish and are so advised.

- (iii) The regularization application of the petitioner and the application/ s for regularization, if any, filed by the respondents 5 and 6 shall be considered and disposed of by the competent officer of the respondent Municipality by following the procedure established by law, however, after giving an opportunity of hearing to all the concerned and communicate the decisions taken on such applications to the petitioner as well as the respondents 5 and 6, within a week after taking such decisions.
- (iv) The respondents 5 and 6 shall not make any further constructions in their property except in accordance with the approved building permits; and, if necessary, they shall await the decision of the Municipality in the matter, if they so wish and are so advised.
- (v) It is needless to state and it is trite to observe that insofar as the complaints regarding encroachments and title, the complainants will have to approach an appropriate Forum for redressal of the said grievances, if any, and there is no need to consider the said aspect in this writ petition.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

21st November, 2017

M. SEETHARAMA MURTI, J

Note:- Issue CC by 28.11.2017

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