

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.26137 of 2016

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the proceedings dated 13.06.2017 in B.A.No.11538/2015/ACP Zone-I/EO, issued by the second respondent-Commissioner, GVMC.

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration & Urban Development for the first respondent, Sri S.Lakshmi Narayana Reddy, learned Standing Counsel for GVMC, for respondent Nos.2 to 4 and Sri T.S.Venkata Ramana, learned counsel for the fifth respondent, apart from perusing the material available before the Court.

According to the petitioner herein, he along with eight others, entered into a development agreement vide document No.928/2015 dated 20.06.2015 in respect of an extent of land admeasuring 3291.47 sq.yards situated at Madhurawada, Ravulapalem, Visakhapatnam. It is further stated that an application was made for construction of residential apartments and the GVMC, vide proceedings BA.11538/205/DCP-1/G1 dated 10.03.2016, granted building permission. Now, by virtue of the impugned notice, dated 13.06.2017, obviously on the

complaint made by the GPA holder, the second respondent-Commissioner, GVMC directed the petitioner to submit documents to establish the link from one Sri Nagothi Tatayya within seven days from the date of receipt of the said notice. While informing in the said notice that further action would be taken as per rules in force, the second respondent also directed the petitioner herein to stop construction work till the resolution of the issue. It is further submitted by the learned counsel that the impugned notice issued by the second respondent-Commissioner, GVMC suffers from inherent lack of jurisdiction and is highly illegal, arbitrary and opposed to the very spirit and object of the provisions of the Municipal Corporation Act and that, once permission is granted after due verification by the GVMC authorities, the second respondent-Commissioner, GVMC has absolutely no jurisdiction to undertake any enquiry as to the title of the property. It is the further submission of the learned counsel that, having failed before the Civil Courts, the unofficial respondents herein approached the GVMC by way of the present complaint and, as such, the GVMC authorities ought not to have entertained the complaint.

On the other hand, it is submitted by the learned Standing Counsel that there is no illegality in the impugned action and the impugned notice is only in the nature of a show cause notice

directing the petitioner herein to produce certain documents for necessary verification and not for the purpose of deciding the title and it is only an exercise permissible under Section 450 of the Greater Hyderabad Municipal Corporation Act, 1955.

It is submitted by the learned counsel for the unofficial respondents that there is no infirmity in the impugned notice and, in the absence of the same, the same is not amenable for any judicial review under Article 226 of the Constitution of India and the present Writ Petition is not maintainable as it is open for the petitioner herein to submit the documents as directed by the second respondent-Commissioner, GVMC vide the impugned notice.

There is absolutely no dispute with regard to the fact that the GVMC authorities granted permission in favour of the petitioner and others on 08.03.2016 for construction of the building. According to the learned counsel for the petitioner, the fifth respondent herein filed O.S.No.211 of 2016 before the learned VII Additional Senior Civil Judge, Visakhapatnam in respect of the subject property against the petitioner and eight others, seeking permanent injunction and in the said suit he also filed I.A.No.407 of 2016 under the provisions of Order 39 Rules 1 & 2 of CPC for temporary injunction and the said I.A. was dismissed on 29.04.2016 and, according to the learned

counsel, the fifth respondent also filed C.M.A.No.201 of 2016 before the learned Principal District Judge, Visakhapatnam and later the same was withdrawn. It is specifically stated by the learned counsel for the petitioner that, after the above said orders, the fifth respondent herein filed O.S.No.477 of 2016 on the file of the learned XII Additional District Judge, Visakhapatnam for declaration of title, cancellation of the sale deeds, executed in favour of the petitioner and eight others, and cancellation of the development agreements and in the said suit I.A.No.809 of 2016 was filed for injunction. It is also submitted by the learned counsel that the learned XII Additional District Judge, Visakhapatnam did not grant any injunction in the said I.A.

According to the learned counsel for the petitioner, having failed in his attempt before the Civil Courts to obtain interim orders, the fifth respondent herein gave a complaint before the second respondent-Commissioner, GVMC against the petitioner and he also filed W.P.No.37030 of 2016 on 31.10.2016 seeking a direction to the GVMC for disposal of his representation dated 04.07.2016 and objections and also not to allow the third respondent herein to make any construction in the subject land and the said Writ Petition is still pending consideration before this Court.

The sum and substance of the case of the petitioner, as submitted by the learned counsel for the petitioner, is that, in view of the pendency of the civil litigation as mentioned supra before the competent Civil Courts, it is not open for the second respondent-Commissioner, GVMC to undertake any sort of enquiry as to the rights of the authorities having granted building permission as long back as on 08.03.2016.

On the other hand, it is the contention of the learned Standing Counsel so also the learned counsel for the unofficial respondents that the impugned notice is only in the nature of a show cause notice and the petitioner herein can submit his explanation and also supporting documents, if any, for consideration of the GVMC.

It is submitted by the learned counsel for the petitioner that, in fact the petitioner herein also submitted a representation on 03.07.2017 after receipt of the impugned notice but the second respondent-Commissioner, GVMC is not taking any action on the said representation despite lapse of considerable length of time which is resulting in irreparable loss and hardship to the petitioner herein.

Having heard the learned counsel for the petitioner, the learned Government Pleader, the learned Standing Counsel, so also the learned counsel for the unofficial respondents, this

Court, in the facts and circumstances of the case, deems it appropriate to dispose of the present Writ Petition with a direction to the second respondent-Commissioner, GVMC to consider the explanation dated 03.07.2017 offered by the petitioner herein in response to the impugned notice dated 13.06.2017 and pass appropriate final orders after hearing the petitioner as well as the unofficial respondents herein. It is open for the petitioner herein to file all the documents before the second respondent-Commissioner, GVMC and advance his contentions as regards jurisdiction of the Commissioner also to issue the impugned notice. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions, if any, pending in the writ petition, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

12th September, 2017
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