

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.2646 of 2016

ORDER:

This Contempt Case is filed alleging willful disobedience of the order dated 31.08.2016 in W.P.M.P.No.36236 of 2016 in W.P.No.29267 of 2016.

CONTENTIONS OF PETITIONER:

2. The petitioner had filed the said writ petition alleging that respondents 3 and 4 had made unauthorized construction on 10' wide public road passing between Plot No.18/part and 19/part situated opposite Pillar No.290 and 291 in Survey No.130 and 149 of Kattedan Village, Shivarampally, Rajendranagar, Ranga Reddy District. He also stated that he had obtained a temporary injunction, after contest on 04.04.2016 in I.A.No.732 of 2015 in O.S.No.191 of 2015 from the Additional Junior Civil Judge-cum-XVII Metropolitan Magistrate, Cyberabad at Rajendranagar restraining respondents 3 and 4 from making any construction in the above property until disposal of the said suit and that the said interim order is also violated by respondents 3 and 4.

THE INTERIM ORDER IN THE W.P.M.P.No.36236 OF 2016 IN

W.P.No.29267 OF 2016

3. On 31.08.2016 in W.P.M.P.No.36236 of 2016 in W.P.No.29267 of 2016 after considering the above submissions, this Court granted a direction to respondents 1 and 2 to stop the construction being made by respondents 3 and 4 in the above property and also to take photographs of the structure as they stand on that day and file them in the registry before 06.09.2016.

COUNTER AFFIDAVIT OF RESPONDENT Nos.1 AND 2:

4. Respondents 1 and 2 filed counter affidavit stating that the 4th respondent, who is the owner of Plot No.19/part made application on 15.12.2015 for construction of Ground and 1st floor in the said plot admeasuring 100 sq. yards in Survey No.149 of Katedan Village; and that the said application was refused in the proceedings dated 12.01.2016 since the applicant had already commenced construction by joining the Plot No.19 with another plot encroaching 10' lane in violation of G.O.Ms.No.168, Municipal Administration, dt 07.04.2012 as well as on other grounds mentioned THEM.

5. It is further stated that the 3rd respondent made an application for making constructions of Ground + first floor in Plot No.18/part in Survey No.130 and 149 on 15.12.2015, but that application was also refused on 07.01.2016 giving identical reasons. It is further stated that the 4th respondent submitted an application under Building Regularization Scheme on 28.02.2016 notified vide G.O.Ms.No.152

of 2015, dated 02.11.2015, but since the same was made after the cut of date of 28.10.2015, the said G.O. does not apply. It is stated that respondents 3 and 4 have encroached 10' wide lane between Plot No.18/part and 19/part owned by them, that permission for construction of the building consisting of Ground + 1st floor were already refused and inspite of the refusal of the building applications both respondents 3 and 4 carried out unauthorized construction and erected structures unauthorisedly encroaching 10' wide lane. It is also stated that they have issued notice under Section 452(1) and 461(1) of GHMC Act on 08.12.2015, notice under Section 452(2) of the Act on 11.01.2016 and another notice on 06.09.2016 to maintain status quo and stop further work, but respondents 3 and 4 continued the work. It is further stated that respondents 3 and 4 approached the VIII Additional Senior Civil Judge, Ranga Reddy District and filed O.S.No.1369 of 2016 before the said Court against the Greater Municipal Corporation of Hyderabad and obtained status quo order in I.A.No.335 of 2016 on 12.09.2016. It is stated that in view of the status quo order, the GHMC is unable to do anything, though they had filed a counter in O.S.No.1369 of 2016.

COUNTER AFFIDAVIT OF RESPONDENTS 3 AND 4:

6. Respondents 3 and 4 filed counter affidavit stating that they have not violated any order passed by this Court; that they became

aware of the interim order passed by this Court on 31.08.2016 in W.P.M.P.No.36236 of 2016 in W.P.No.29267 of 2016 only on 08.02.2017 and that they had completed entire construction by March, 2016. It is also contended that the petitioner lives in a far off place more than one kilometer from the respondents 3 and 4, that they have no access to the house of respondents 3 and 4 and the alleged path way is not useful for the petitioner and he also filing cases after cases to harass them. It is also stated that the temporary injunction granted in favour of the writ petitioner on 04.04.2015 in O.S.No.191 of 2015 is after completion of the construction of the building. They also denied the photographs filed by the petitioner as well as respondents 1 and 2 showing the completed construction and contended that they are hand in glove in each other. It is also stated that C.M.A.No.36 of 2016 was filed before the VIII Additional District Judge, Ranga Reddy District at L.B.Nagar against the order in I.A.No.732 of 2015 in O.S.No.191 of 2015 and that the same is pending.

THE CONSIDERATION BY THE COURT:

7. To verify the contentions in the counter affidavit filed by respondents 3 and 4, this Court has summoned records in O.S.No.191 of 2015 from the file of VIII Additional District Judge, Ranga Reddy District, L.B.Nagar and the documents filed by respondents 3 and 4. Photograph filed by respondents 3 and 4 in the said suit show that by

12.09.2016 there was only Ground + first floor and a portion of the first floor was also not completed. There were only pillars on the second floor and there was no second floor. This photograph filed in the suit was actually taken on 10.09.2016.

8. If really there was a second floor already completed by respondents 3 and 4 by March, 2016 as alleged in the counter filed by them, then the photograph filed by them taken on 10.09.2016 in the Court of VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar would have disclosed existence of second floor. Therefore, this is a false plea taken by respondents 3 and 4.

9. The other plea of respondents 3 and 4 is that they came to know about the interim order dated 31.08.2016 passed by this Court in W.P.M.P.No.36236 of 2016 in W.P.No.29267 of 2016 only in March, 2017 and not before that.

10. This Court called for a report from the Registry as to when the said interim order was dispatched and served on respondents 3 and 4.

11. The report of the Registry indicates that the said interim order was dispatched on 31.08.2016 and copy of it was served on respondents 3 and 4 and acknowledgment was received on 08.09.2016. The acknowledgment was also submitted before this Court.

12. When this Court pointed this out to, counsel for respondents 3 and 4, he contended that the signature on acknowledgment is not that of respondents 3 and 4 and therefore the petitioner could have manipulated the said endorsement on the acknowledgment card. This allegation cannot be accepted because the writ petitioner would not be aware when the notice sent by the registry would go to respondents 3 and 4. Probably because respondents 3 and 4 were not in the house when the postman came, it was received by somebody else in the house. In any event, when the copy of the interim order was addressed to the house address of respondents 3 and 4 and this address, is not disputed by respondents 3 and 4 and the acknowledgment cards received by this Court indicates that it was served on that address, merely because respondents 3 and 4 have not signed the acknowledgment cards, it cannot be said that they did not receive the said interim order. Therefore, this plea of respondents 3 and 4 that they came to know about the interim order passed by this Court only in March, 2017 is also disbelieved.

13. It is not in dispute that respondents suffered an order dated 04.04.2015 in I.A.No.732 of 2015 in O.S.No.191 of 2015 rendered by the Additional Junior Civil Judge, Cyberabad restraining them from proceeding with the construction in the subject property at the instance of the petitioner. Not only this order has violated, but also

the order dated 31.08.2016 passed by this Court in W.P.M.P.No.36236 of 2016 in W.P.No.29267 of 2016.

14. This is because by 10.09.2016 there was only G+ first floor of which the first floor was incomplete in the subject property as per photograph filed by respondents 3 and 4 in the civil suit O.S.No.1369 of 2016 filed by them, while the latest photographs filed by both the petitioner and GHMC show that he completed first floor also.

15. Thus, respondents 3 and 4 have not only violated the Civil Court's order, but also order passed by this Court and filed false affidavit in this Court that they had completed the construction by March, 2016 and that they do not know about the interim order passed by this Court till March, 2017. This obviously goes to show that they have no regard for orders passed by the Civil Court or this Court and have clearly not hesitated to perjure themselves with a view to mislead this Court. Therefore, respondents 3 and 4 are held guilty of contempt of Court and the contempt case is liable to be allowed.

16. In the result, the Contempt Case is allowed sentencing respondents 3 and 4 to undergo simple imprisonment for a period of two months and pay fine of Rs.2,000/- (Rupees two thousand only) each, which shall be paid within four weeks from today. The petitioner shall deposit substance allowance @ Rs.300/- per day for each of the respondents 3 and 4 within four weeks from today. The

sentence of imprisonment is suspended for a period of six weeks. The GHMC authorities including respondents 1 and 2 shall forthwith take immediate steps to demolish the entire structure erected by respondents 3 and 4 without securing any permission.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Dated: 13-04-2017
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