

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.26059 OF 2009

ORDER:

The order, impugned in the Writ Petition, is the proceedings issued by the Commissioner, Municipal Corporation, Guntur dated 23.11.2009 whereby permission for construction, granted to the petitioner earlier on 28.06.2005, was cancelled. The order records the Municipal Corporation having received the statements/evidence of ten persons during the course of enquiry, including the petitioner herein, and then holds that, as per the remarks of the Town Surveyor and T.P. Staff, the measurement shown in the registered documents did not tally with the ground measurements, the boundaries were different with reference to the site on ground as well as boundaries; and the two documents, submitted along with plans, did not coincide with each other. On the basis of the said statements, the Commissioner concluded that the petitioner had obtained permission for construction of a Commercial Complex fraudulently, and by misrepresentation of facts i.e., by way of producing false documents.

While orders, which are vitiated by fraud, can undoubtedly be set aside, mere allegations would not suffice as the plea of fraud must be established by cogent evidence. The impugned order was passed on the premise that the registered documents did not tally with the ground measurements, and the boundaries were different with reference to the site on ground. The Commissioner has arrived at this conclusion on the basis of the statements recorded from certain witnesses none of whom were subjected to cross-examination by the petitioner. The

impugned order of the Commissioner does not even analyse the statements of the witnesses recorded during the course of enquiry..

Sri G. Elisha, Learned Counsel for the petitioner, would draw my attention to the specific averments, in the counter-affidavit filed in WPMP. No.31179 of 2009, that the suit filed by the second respondent against the petitioner in O.S.No.604 of 2008 was dismissed on 28.04.2010. A copy of the judgment, in O.S. No.604 of 2008 dated 28.04.2010, is placed for my perusal.

The Suit, in O.S. No.604 of 2008, was filed by the Luthern Laity Movement and the second respondent herein against, among others, the petitioner who was arrayed as the first defendant, and its Managing partner as the fourth defendant, in the Suit. This Suit was filed before the IV Additional Senior Civil Judge, Guntur to declare the alleged sale deed dated 28.05.2001, registered as document No.8082 dated 06.06.2001, as null and void; and for a mandatory injunction, directing defendants 1 to 5, to remove the construction; to fill up the area, dug by them, with earth in the schedule property; and for a permanent injunction restraining them from ever making any constructions in the schedule property. The said Suit was dismissed for default by order dated 28.04.2010. It is evident, therefore, that the second respondent, having filed a Suit seeking a similar relief, had made a compliant to the Commissioner during the pendency of the Suit proceedings. As the said Suit itself was dismissed, the complaint of the second respondent to the Commissioner, levelling more or less similar allegations, did not justify the impugned order being passed, more so as the said order was passed on the basis of statements recorded behind the petitioners back,

and without giving them an opportunity to cross-examine the witnesses whose statements were recorded and relied upon by the Commissioner.

The order, passed by the Commissioner, suffers, among others, from violation of the rules of natural justice and must, therefore, be set aside. The Writ Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 06.10.2017

MRKR

