

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24598 OF 2017

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the respondents 1 to 3 in threatening to demolish the building bearing municipal No.8-2-603/U/4/1, Road No.10, Banjara Hills, Hyderabad, without issuing any notice whatsoever and without following due process of law, without disposing of BRS applications, at the behest of the 4th respondent, as illegal and contrary to the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 and in violation of settled principles of natural justice.

2. It is the case of the petitioners that they are owners and possessors of house bearing municipal No.8-2-603/U/4/1, admeasuring 400 sq.yds situated in Road No.10, Banjara Hills, Hyderabad, having purchased the same under a registered sale deed bearing document No.4068 of 2014, dated 30.09.2014. That at the time of purchasing of the property, their vendor started construction of the building and they have continued the construction and constructed a building consisting of Cellar, Stilt, ground plus 5 upper floors. In pursuant to G.O.Ms.No.152, dated 02.11.2015, they have made an application dated 28.01.2016 for

penalization of cellar, stilt, ground plus five upper floors. While so, when the respondent officials threatened to demolish the structures, without issuing any notice pending BRS applications, they have filed O.S.No.450 of 2016 before the VI Junior Civil Judge, City Civil Court, Hyderabad, wherein the respondent Corporation filed written statement and contested the suit. The said suit was decreed on 26.04.2017 by the Court below granting perpetual injunction restraining the respondent Corporation from interfering or demolishing the suit schedule property till disposal of BRS application. That during the pendency of suit OS No.450 of 2016, the 4th respondent filed W.P.No.10766 of 2017 seeking a direction to demolish the subject building, wherein this Court granted interim orders in WPMP No.13359 of 2017 on 27.03.2017, directing the respondents 3 and 4 therein (petitioners herein) not to make any further construction and further directed the 2nd respondent therein to ensure that no construction shall take place. It is stated that though the petitioners have not undertaken any construction activity, the 4th respondent issued a contempt notice dated 24.04.2017 to the petitioners and in fact, the 4th respondent filed Contempt Case No.1185 of 2017 and same is posted to 18.08.2017. It is stated that on 17.07.2017, the 2nd respondent served a copy of notice bearing No.603/TPS/C10B, dated 26.05.2017 asking the petitioner

to stop all further construction activities forthwith and the petitioners have given reply on 19.07.2017. It is further stated that on 22.07.2017, the officials of the 3rd respondent came to site and directed to the petitioners to remove the building voluntarily within 3 days. Aggrieved by the action of the respondents 1 to 3, the present writ petition is filed.

3. Heard Sri Ghanta Rama Rao, learned Senior Counsel appearing for the petitioner, who submits that when injunction order is operating in favour of the petitioners, the respondents 1 to 3 cannot demolish the subject building. He also submits that the application submitted by the petitioners under BRS in pursuant to G.O.Ms.No.152, dated 02.11.2015 for regularization of Cellar, Stilt, ground plus five upper floors is still pending, as such, action of the respondents in demolishing the structures is illegal.

4. On the other hand, Sri P.Keshava Rao, learned Standing Counsel for the respondent Corporation submits that the vendors of the petitioners have filed suit O.S.No.1020 of 2013 and same was dismissed as not pressed on 27.07.2015. Again the petitioners filed suit O.S.No.1583 of 2015 with same prayer, in which order of status quo with regard to construction, was granted, but in spite of the same, the petitioners have constructed six floors and that they are planning to construct a pent house over the 6th floor. He further submits that all the statutory

notices viz., Section 452 and 636 of the GHMC Act were already been issued to the petitioners. He further submits that by suppressing the material facts, the petitioners have also filed one more suit in O.S.No.450 of 2016, which is pending.

5. Sri M. Vidyasagar, learned counsel appearing for the 4th respondent submits that in spite of status quo order granted by Civil Court and injunction order by this Court in WPMP No.13359 of 2017 in WP No.10766 of 2017, the petitioners proceeded with the construction of the building and completed the same without obtaining permission.

6. Admittedly, O.S.No.1020 of 2013 is filed by the vendors of the petitioners and same is conveniently got dismissed as not pressed. Petitioners have filed O.S.No.1583 of 2015 for the same relief of injunction against the respondents wherein order of status quo was granted in the said suit, but petitioners proceeded with construction and completed the same. Again the petitioners filed O.S.No.450 of 2016 on the file of VI Junior Civil Judge, City Civil Court, Hyderabad, for the same relief.

7. In writ affidavit, it is stated that application is made for regularization of cellar, stilt, ground plus five floors, but in O.S.No.450 of 2016, it is stated that application is made for 5th floor. According to photographs placed, it shows that the petitioners have completed six floors building. It goes

without saying that as and when any action is attempted to be taken by the respondent Corporation, the petitioners are going on filing one suit or the other before the Courts below. Petitioners suppressed about filing of suit in O.S.No.1583 of 2015 as well as granting of status quo orders granted by the Civil Court in the said suit. It is not known how the petitioners have completed six floors building without obtaining valid permission when status quo order granted by Civil Court is subsisting. Learned Standing Counsel for respondent Corporation submitted that action has been initiated by issuing statutory notices viz., Section 452 and 636 of the HMC Act, which is not seriously disputed by the learned Senior counsel for the petitioners. Mainly on the ground of suppression of facts, the writ petition is liable to be dismissed.

In view of above facts and circumstances, I do not see any reason to entertain the writ petition by exercising extraordinary equitable jurisdiction under Article 226 of the Constitution of India.

Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY,J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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