

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1156 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.20999 of 2017 dated 28.06.2017, as extended by order dated 24.07.2017. The Greater Visakhapatnam Municipal Corporation (GVMC) is the appellant herein. They are aggrieved by the order of *status quo* passed by the Learned Single Judge restraining them from taking action for demolition of the subject building pursuant to a notice issued under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act").

Sri S.Lakshminarayana Reddy, learned Standing Counsel for the appellant-GVMC, would submit that the subject land is Government land; the fact that it is Government land has been admitted by the respondent-writ petitioners in their application dated 27.03.2008 seeking regularisation; not only have the respondent-writ petitioners encroached upon Government land, they have constructed a G+1 building without obtaining prior sanction from the GVMC, though their application for grant of permission was returned within time; the application, in any event, was for grant of permission to a residential building; the respondent-writ petitioners have, instead, established a hotel, and are carrying on business thereat; no occupation certificate was obtained in terms of Section 455(1) &(2) of the Act; and the order of *status quo* would only embolden persons, like the respondent-writ petitioners, in resorting to illegal construction and illegal occupation of Government lands.

On the other hand Sri P.Vishnu Vardhan Reddy, learned counsel appearing on behalf of the respondent-writ petitioners, would submit that the respondent-writ petitioners had earlier invoked the jurisdiction of this Court, and had filed W.P.No.9456 of 2017; by way of an interlocutory order, in W.P.M.P.No.11713 of 2017 in W.P.No.9456 of 2017 dated 17.03.2017, the Learned Single Judge had recorded the submission of the learned Standing Counsel that the subject building was not proposed to be demolished; but, under the guise of earlier proceedings, petitioners were seeking to encroach into Government land and construct sheds; and that necessary action would be taken in accordance with law against the illegal construction of sheds; the appellant-Corporation was aware that a G+1 building was already constructed; and, in the light of their submission that the same was not proposed to be demolished, the Section 636 notice, issued for demolition of the building, is illegal.

Section 455(1)&(2) of the Act reads thus:

“455. Completion of certificates, permission to occupy or use:-

(1) Every person shall, within one month after the completion of the erection or re-erection of building or the execution of any such work as is described in Section 343 deliver or send or cause to be delivered or sent to the Commissioner at his office, a notice in writing of such completion accompanied by a certificate in the form specified in the bye-law signed and subscribed in the manner so specified, and shall give to the Commissioner all necessary facilities for the inspection of such building or of such work and shall apply for permission to occupy the building.

(2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any work, until:-

- (a) permission has been received from the Commissioner in this behalf; or
- (b) the Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate his refusal of the said permission.”

Rule 26 of the Andhra Pradesh Building Rules, 2012 reads thus:

26 OCCUPANCY CERTIFICATE:

(a) Occupancy Certificate shall be mandatory for all buildings. No person shall occupy or allow any other person to occupy any building for any purpose unless such building has been granted an Occupancy Certificate by the Sanctioning Authority. Partial Occupancy Certificate may be considered by the Sanctioning Authority on merits i.e., flats/units or area within a complex which have fulfilled all the requirements in addition to basic facilities like lifts, water supply, sanitation, drainage, roads, common lighting etc. However, in respect of individual buildings in plots upto 100 Sq.m. with height upto 7m obtaining Occupancy Certificate is optional.

(b) The owner shall submit a notice of completion through the registered architect and licenced builder/developer along with prescribed documents and plans to the Sanctioning Authority. The Sanctioning Authority or the person

authorized, on receipt of such notice of completion shall undertake inspection with regard to the following aspects:

- (i) No. of Floors
- (ii) External setbacks
- (iii) Usage of the building
- (iv) Parking space provision
- (v) Abutting road width

The total height of the building may vary to a maximum of 1m with no change in the permitted number of floors subject to compliance of fire service norms.

(c) The Sanctioning Authority shall communicate the approval or refusal of the Occupancy Certificate within 15 days or may issue the same after levying and collecting compounding fee, if any. If the authority fails to issue the Occupancy Certificate within the above stipulated period the responsibility shall be fixed with the concerned officer who fails to process the file.

(d) The Sanctioning Authority is empowered to compound the offence in relation to setbacks violations (other than the front set back) in respect of non high rise buildings only upto 10%, duly recording thereon the violations in writing. The rate of Compounding fee shall be equivalent to one hundred per cent of the value of the land as fixed by the Registration Department at the time of compounding for the violated portion and the Government may revise this rate from time to time. Compounding of such violation shall not be considered for buildings constructed without obtaining any sanctioned plan.

(e) For all high rise buildings, the work shall be subject to inspection by the Andhra Pradesh State Disasters Response & Fire Services Department and the Occupancy Certificate shall be issued only after clearance from the Andhra Pradesh State Disasters Response & Fire Services Department with regard to Fire Safety and Protection requirements.

(f) The Sanctioning Authority shall ensure that all public and semi public buildings are constructed disable friendly and provide facilities for specially enabled persons as per National Building Code – 2005 of India while issuing Occupancy Certificate.

(g) The functional/line agencies dealing with electric power, water supply, drainage and sewerage shall not give regular connections to the building unless such Occupancy Certificate is produced, or alternatively may charge 3 times the tariff till such time Occupancy Certificate is produced. This condition shall also be applicable to all unauthorized constructions and buildings constructed without sanctioned building plan. In addition to the above, the Local Body shall collect every year two times the property tax as penalty from the owner/occupier.

(h) The Registering Authority shall register only the permitted built up area as per the sanctioned building plan and only upon producing and filing a copy of such sanctioned building plan. On the Registration Document it should be clearly mentioned that the registration is in accordance with the sanctioned building plan in respect of setbacks and number of floors.

(i) The financial agencies/Institutions shall extend loan facilities only to the permitted built up area as per the sanctioned building plan.

It is evident, from the aforesaid provisions, that no person can occupy a building without intimating the GVMC regarding completion of construction and till 21 days thereafter if, in the interregnum, GVMC does not pass any order. Admittedly, in the present case, no application has been submitted by the respondent-writ petitioners for grant of an occupancy certificate. Even otherwise, the application submitted by the respondent-writ petitioners was for construction of a residential building and the respondent-writ petitioner has instead put

the subject building to commercial use. As the order in W.P.M.P.No.11713 of 2017 in W.P.No.9456 of 2017 dated 17.03.2017 appears to record the submission of the learned Standing Counsel that the building would not be demolished, it is but appropriate that W.P.No.9456 of 2017 is heard along with W.P.No.20999 of 2017. Since the respondent-writ petitioners have not obtained any occupancy certificate, they cannot be permitted to occupy the subject building, much less put it to commercial use. The GVMC shall seal the subject premises, and keep it under lock and key till further orders are passed by the Learned Single Judge, in W.P.No.20999 of 2017, after considering the rival submissions on merits.

The Writ Appeal is accordingly disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

21st August, 2017
JSU

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI**



Writ Appeal No.1156 of 2017

Date: 21.08.2017

JSU