

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 12447 of 2015

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus directing respondent Nos. 1 and 2 to take action against respondent No.3 for leasing out the mortgaged flat No.2B, without obtaining Occupancy Certificate by respondent No.3, and consequently direct respondent Nos.1 and 2 to take appropriate action against respondent No.3 for the illegal construction made.

2) The facts in issue are as under:

The petitioner herein is a resident of Flat No.3B situated at Sai Deva's Dwarakamayee Apartment at Huda Sai Nagar, Hayathnagar, Hyderabad. The averments in the affidavit show that respondent Nos.1 and 2 sanctioned building permission in favour of respondent No.3 herein vide permission No.G/ BP/ 14/ LV/ EZ/ 2010, dated 30.07.2010. Respondent No.3 made deviations to the sanctioned building plan while constructing the building which resulted in authorities refusing to issue occupancy certificate. Because of the deviations made, the authorities did not grant drinking water connection to the apartments constructed by respondent No.3. A consumer case was also filed against respondent No.3 for not providing basic amenities, as promised. By an order dated 12.11.2013, the said consumer case was

allowed in part directing respondent No.3 to pay penalty etc. An appeal came to be preferred, which is still pending before the State Consumer Forum. It is further averred in the affidavit that respondent No.3 herein mortgaged one Flat in favour of respondent No.1 herein as per the provisions of Greater Hyderabad Municipal Corporation Act and the Rules made therein. As per the provisions, respondent No.3 herein is obligated not to lease out the Flat which is mortgaged to respondent No.1, unless and until the occupancy certificate has been granted by respondent No.1. It is stated that without obtaining occupancy certificate, respondent No.3 herein has leased out the mortgaged Flat bearing No.2B and is also collecting rents from the tenant therein. The petitioner herein made an application to respondent No.2, under Right to Information Act, asking them to furnish details of action to be taken in case the mortgaged Flat is leased out. The Corporation furnished the procedure wherein it was mentioned that the Corporation has no option except to seize the Flat. It is said that in spite of making repeated requests to act in accordance with law with regard to Flat No.2B, the authorities failed to do so, which lead to filing of the writ petition.

3) By an order dated 20.08.2015, this Court while admitting the writ petition ordered interim direction as prayed for, ie. directed respondent Nos.1 and 2 to take immediate action against respondent No.3 for leasing out the mortgaged property (Flat 2B) without obtaining occupancy certificate.

4) After much persuasion and filing of a contempt case, the authorities are said to have seized the said premises.

5) In spite of seeking time to file counter on 08.06.2015, the Corporation failed to do so. However, respondent No.3 filed counter disputing the averments made in the affidavit filed in support of the writ petition. According to him nothing survives for adjudication at this point of time since the authorities have already seized the flat. It is also stated that the writ petition itself is not maintainable as the petitioner has no locus to file the writ petition. Apart from that, it is stated that a notice under Section 452 (2) of the Hyderabad Municipal Corporation Act came to be issued for demolition of the deviations made, to which respondent No.3 is said to have filed W.P.No.7440 of 2016, wherein this Court granted stay of demolition. Since the B.R.S application filed by respondent No.3 is pending consideration, it is urged that the writ petition has become infructuous and no further orders are necessary.

6) Learned counsel for the petitioner would submit that in the absence of occupancy certificate being issued by respondent No.1-Corporation, the authorities are left with no other option except to seize the premises till the said certificate is obtained. Therefore, it is urged that the plea taken by the respondents has no legs to stand.

7) Insofar as the maintainability of the writ petition is concerned, it is to be noted that the writ petition herein lives in

the very same premises where the alleged deviations are made and also where the mortgaged flat is situated. He is also one of the persons who purchased a flat in the said complex. Therefore, it cannot be said that he is not interested person. On the other hand he is the aggrieved person as the building was alleged to have been constructed in complete deviation to the sanctioned plan. Therefore, the argument of the learned counsel for respondent No.3 that the writ petitioner has no locus to file the writ petition cannot be accepted.

8) With regard to the plea that no cause survives for adjudication at this point of time since Flat No.2-B has already been seized, it is to be noticed that the said Flat came to be seized pursuant to an interim order passed by this Court. Therefore, the argument that no cause survives and writ petition has become infructuous cannot be accepted.

9) Learned counsel for the petitioner submits that if the writ petition is dismissed as infructuous, there is every possibility of respondent Nos.1 and 2 re-opening the said Flat and permitting respondent No.3 to use the same. The plea of the writ petitioner cannot be brushed aside.

10) As seen from the record, respondent No.3 herein is said to have made an application seeking regularization of the said building. Further, pursuant to a notice issued under section 452 (2) of the Hyderabad Municipal Corporation Act, respondent No.3 filed W.P.No.7440 of 2016, wherein this Court granted interim

stay of demolition of the said building. In fact a Division Bench of this Court in W.P.No.5130 of 2016 and Batch observed as under:

“In case the petitioners have submitted applications for regularisation on or before 01.03.2016, the respondent Municipal Corporation shall not take coercive steps to demolish the illegal structures raised by them till orders are passed on their applications for regularisation, and the said orders are communicated to them. It is open to the Municipal Corporations, in such of those cases where the applications for regularisation are rejected, to initiate action for demolishing the subject structures in accordance with the provisions of the GHMC Act, and the Rules and bylaws made thereunder. It is made clear that, in such of those cases where applications, seeking regularisation, have not been submitted before 01.03.2016, it is open to the Municipal Corporations concerned to take action, for demolition of the illegal structures, in accordance with law.”

11) In view of the observations made in the said writ petition and having regard to the fact that Flat No.2B is already seized, the same shall be kept locked and sealed till the occupancy certificate is issued by respondent No.1, in accordance with law.

12) With the above direction, the writ petition is disposed of. There shall be no order as to costs.

13) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

18.04.2017
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