

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

W.V.M.P.No.4714 of 2016 and W.V.M.P.No.1473 of 2017

IN/AND

W.P.No.31004 of 2016,

W.P.No.1123 of 2017

AND

C.C.No.2124 of 2016

COMMON ORDER:

Since common issues of fact and law arise between the parties to these proceedings and all these cases relate to constructions made in same premises by the non-official respondent in these cases, they are being disposed of by this common order.

2. Heard Sri V. Surya Kiran Kumar for petitioner, Sri Ancha Panduranga Rao, Standing Counsel for Respondents 2/5 in both W.Ps and Respondent No.1 in the CC, and Sri K.S.Murthy for Sri P.Subba Rao, Counsel for 4th respondent in the W.Ps and 2nd respondent in the CC.

3. The petitioner is a senior citizen and is carrying on Medical Profession in a hospital by name Dhulipala Hospital at premises bearing Door No.12-25-179, Opposite Sivalayam, Kothapet, Guntur.

4. The 4th respondent in the Writ Petitions is the owner of the property bearing Door No.12-25-180 which is adjacent to the petitioner's property. He is the 2nd respondent in C.C.No.2124 of 2016.

5. In both writ petitions, the 1st respondent is the State of Andhra Pradesh, represented by its Principal Secretary, Municipal Administration, the 2nd respondent is the Guntur Municipal Corporation, the 3rd respondent is the A.P. Capital Regional Development Authority and the 5th respondent is the Commissioner of the Guntur Municipal Corporation impleaded *eo nomine*.

W.P.No.31004 of 2016

6. Initially the petitioner filed W.P.No.31004 of 2016 for a Writ of Mandamus declaring the order in proceedings Roc.No.5005/2016/G2, dt 28.06.2016 issued by the 5th respondent on behalf of the 2nd respondent as illegal, arbitrary, malafide and without jurisdiction; to set aside the same; and to direct the 2nd respondent Corporation to take steps for demolition of the illegal and unauthorised structures put up by the 4th respondent in the premises 12-25-180, Kothapet.

7. Admittedly in the premises D.No.12-25-180 belonging to 4th respondent, there was originally a hotel by name Abhilasha Hotel. According to the 4th respondent, his mother constructed a Ground+First floor +Second floor in the said premises after obtaining permission for construction, vide proceedings Rc.No.G3, B.L.No.421/78 dt 03.02.1978.

8. The petitioner contended that without obtaining any permission from the 2nd respondent Corporation, the 4th respondent

excavated a cellar, raised additional pillars/beams increasing the area of each floor resulting in the set backs becoming non existent and even occupied part of the petitioner's property. He contended that the excavation resulted in caving in of soil in petitioner's property creating gaping holes therein and exposing water and drain pipe lines. According to the petitioner, the construction activity undertaken by the 4th respondent endangers the safety of his building and inspite of complaints made on 25.02.2015, 07.04.2015, 17.03.2015 and 06.04.2016 to the 2nd respondent, no action was taken by it. He contended that he also addressed a complaint to the 3rd respondent and the 3rd respondent wrote to the 2nd respondent in L.Dis.No.E1-169/2015 dt Nil-08-2015 stating that the construction embarked by the 4th respondent was unauthorised and the 2nd respondent should take action and report to it, but the 2nd respondent did not take any action.

9. The petitioner then filed W.P.No.12357 of 2016 in this Court challenging the inaction of the 2nd respondent on his complaints. The said Writ petition was disposed of on 13.04.2016 to take action within four weeks from the order on the petitioner's above complaint.

10. The petitioner then filed C.C.No.916 of 2016 alleging disobedience of this order, but the said Contempt case was closed on 27.08.2016 on the basis of a counter affidavit filed by the 5th respondent that she inspected the building and instructed the 4th respondent to submit building proposal of third floor in accordance

with rules; and that the staff of the 2nd respondent corporation had removed one column on the northeast side and third floor roof slab.

Proceeding Dt 28.06.2016

11. A memo Roc.No.5005/2016/G2 dt 28.06.2016 was issued by the 5th respondent to the 4th respondent advising the 4th respondent to apply for permission on line for construction of the third floor in his premises. This Memo is challenged in W.P.31004 of 2016.

12. Petitioner contends that once the 5th respondent found that there was illegal construction being done by the 4th respondent, she should have directed its removal and could not have issued the impugned proceeding dt 28.06.2016 advising the 4th respondent to apply for online permission. The petitioner also filed photographs of the third floor construction being done by the 4th respondent and also pillars for the fourth floor put up by him.

13. The petitioner alleges that the 4th respondent again repaired the portion of the structure demolished in part by the 2nd respondent and was proceeding to construct a fourth floor also.

THE INTERIM OTRDER DT.19.9.2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016

14. On 19.09.2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016, this Court directed the 2nd respondent to stop

all construction activity by the 4th respondent since *prima facie*, the 4th respondent did not have permission for construction of the third floor.

W.V.M.P.No.4714 of 2016 AND W.V.M.P.No.1473 of 2017

15. W.V.M.P.No.4714 of 2016 was filed by the 4th respondent and W.V.M.P.No.1473 of 2017 was filed by 2nd respondent to vacate the said order.

16. The 4th respondent contended that the 2nd respondent granted building permission for erecting 3rd and 4th floors vide permit dt.26.08.2016 on the basis of an application made online in April, 2016 by the 4th respondent and that *after obtaining such permission*, he started construction of 3rd and 4th floors.

17. This contention cannot be accepted because the 2nd respondent did not state that the 4th respondent had applied for permission for construction of 3rd and 4th floors in April, 2016 as alleged by the 4th respondent. Copy of alleged application for permission made by 4th respondent has not been filed by respondents.

18. The photographs filed by the petitioner on 12.09.2016 along with the Writ petition disclosed the existence of 3rd floor in the 4th respondent's building with slab, walls and window shutters apart from pillars to support the 4th floor slab (which was not yet laid). These photographs are not disputed by Counsel for 4th respondent.

19. In my opinion, pursuant to the permission issued on 26.08.2016, by 12.09.2016 (the date when the W.P.31004 of 2016 was filed) in a mere 14 days, all the above structures could not have been erected by the 4th respondent. So I hold that 3rd floor was already constructed before the 4th respondent applied for permission for construction.

20. Further, in my opinion, it is impossible to excavate a cellar when there is already an existing ground + two floors building (where the hotel was previously being run). This is not denied by respondents.

21. Obviously, the 4th respondent had removed the old structure of Ground + two floors in which the Hotel was earlier run, excavated the cellar without permission and erected G+ 4 floors and pent house without adhering to the set backs and without taking any fresh permission for constructing the G+ 2 floors and cellar.

22. In any event 4th respondent did not explain how he could have excavated a cellar without any permission.

THE REPORT OF THE I ADDL. JUNIOR CIVIL JUDGE, GUNTUR

23. In order to verify the allegations made by the petitioner and which were denied by 4th respondent, on 02.03.2017 I directed the Principal District Judge, Guntur to depute a Judicial Officer to inspect the premises of the 4th respondent and file report with photographs

stating whether any construction was going on in the premises of 4th respondent.

24. The District Judge, Guntur deputed the I Additional Junior Civil Judge, Guntur to visit the premises of the 4th respondent.

25. The I Additional Junior Civil Judge, Guntur visited the site on 04.03.2017 and noticed that *in the place of old building, a new construction has been going on and the interiors of the building disclose the same; for first two floors, plastering work of outside the building was not completed, but from 3rd to 5th floors, outside plastering work was completed; and the building consists of five floors and pent house on top.* She also stated that the watchman, mason and worker informed her that *previously existing hotel building was removed by the 4th respondent and he was constructing the present building with cellar and construction work was going on.* She stated that on the southern side of the ground floor there is a gap of two feet approximately between building wall and parapet wall touching the hospital parapet wall; the supporting wall of the ramp on the eastern side of the building touches the hospital wall (the building of the petitioner). Photographs were also filed by her. Thus the set backs prescribed by law were not adhered to by 4th respondent for this newly constructed building.

26. No objections were filed to this report.

27. Thus, it is clear that the 4th respondent deliberately and intentionally violated the order dt 19.09.2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016 and the 5th respondent did nothing to stop the construction activity of the 4th respondent as directed therein.

28. Between 12.09.2016 and 04.03.2017, the 4th respondent completed the 3rd floor as well as 4th floor and also erected a pent house on the top apart from violating the set back requirements as per building bye-laws by making construction almost touching the walls of the petitioner's building. As already held by me, 4th respondent was not merely erecting two new floors on the old structure (where the hotel was run) but he was in fact, building an entire new structure consisting of G+ 4 floors and pent house on top after excavating a cellar.

29. This occurred under the very nose of the 5th respondent and the other officials of the 2nd respondent and yet they allowed this to go on. The 5th respondent in fact advised the 4th respondent to apply for permission to build 3rd floor in the proceedings dt 28.06.2016. In the said endorsement, she made no reference to the cellar or the demolition of the old structure and erection of an entire new structure by 4th respondent. Thus it is clear that there is clear collusion between 5th respondent and 2nd respondent's officials with 4th respondent.

30. In fact, since the 4th respondent did not take any permission for excavating the cellar and building afresh ground + two floors or the pent house in the 5th floor, and also did not adhere to set backs, the respondents 2 and 5 ought to have issued notice for demolition of the entire structure erected by the 4th respondent on 28.6.2016 itself.

31. In **Shanti Sports Club v. Union of India**¹, the Supreme court declared:

“ 73.The object of planned development has been achieved by rigorous enforcement of master plans prepared after careful study of complex issues, scientific research and rationalisation of laws. The people of those countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the master plan, etc. They respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan, etc. in the construction of buildings, residential, institutional or commercial. In contrast, scenario in the developing countries like ours is substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity.

74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus

¹ (2009) 15 SCC 705

of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.—K.

Ramadas Shenoy v. Town Municipal Council, Udipi², G.N. Khajuria (Dr.) v. DDA³, M.I. Builders (P) Ltd. v. Radhey Shyam Sahu⁴, Friends Colony Development Committee v. State of Orissa⁵, M.C. Mehta v. Union of India⁶ and S.N. Chandrashekar v. State of Karnataka⁷.

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”

32. The above observations aptly apply to the instant cases.

33. The 5th respondent, on behalf of 2nd respondent, filed

W.V.M.P.No.1473 of 2017 and contended that the petitioner and 4th

² (1974) 2SCC 506

³ (1995) 5 SCC 762

⁴ (1996) 6 SCC 464

⁵ (2004) 8 SCC 733

⁶ (2006) 3 SCC 399

⁷ (2006) 3 SCC 208

respondent were using the Court to satisfy their vengeance against each other though the 2nd respondent was taking steps against the deviations and unauthorised constructions made by both of them. As shown above, this is clearly not the case.

34. She further stated that 4th respondent had obtained permission on 26-08-2016 for construction of 3rd and 4th floors over existing G+2 floors which were already constructed pursuant to permission granted in 1978. While permission may have been obtained by stating thus, in fact 4th respondent had removed the old structure, excavated a cellar without permission and erected afresh G+4 floors. He did not apply for G+ 2 floors afresh after getting the earlier structure demolished and is acting as if he only built on existing structure and had not built a totally new structure of all floors.

35. Though 5th respondent stated that on representation dt.25-02-2015 being received, the 2nd respondent stopped the work, the fact remains that 3rd and 4th floors were erected by 4th respondent subsequent thereto and respondent Nos.2 and 5 did nothing to stop it. In my opinion, both respondents 4 and 5 have filed false affidavits and tried to mislead the Court.

36. The 5th respondent mentioned that 4th respondent filed W.P.No.4581 of 2017 against the 2nd respondent and obtained interim order not to demolish the constructions made by him in W.P.M.P.No.5530 of 2017 on 10-02-2017.

37. But in that Writ Petition, admittedly, the 4th respondent deliberately did not implead the Writ Petitioner who has filed W.P.31004 of 2016 and CC.No.2124 of 2016. This is an act of fraud on his part. Therefore any order passed therein does not bind the petitioner.

38. Between 19-09-2016, when this Court in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016 directed the 2nd respondent to stop construction, and 10-02-2017, the 5th respondent/2nd respondent not only did not stop construction as directed, but also did not bring it to the notice of the learned Judge who heard W.P.No.4581 of 2017 on 10-02-2017 about the order passed by this Court on 19-09-2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016 or even about the filing of the said Writ petition. This further corroborates the collusion between 4th respondent and respondent Nos.2 and 5.

39. Such an order obtained by collusion between the said parties is null and void and has no legal effect in view of Section 44 of the Evidence Act, 1872 and there is no need to challenge it separately. **(Gram Panchayat of village Naulakha Vs. Ujagar Singh⁸).**

40. Therefore the existence of such an interim order in W.P.M.P.No.5530 of 2017 in W.P.No.4581 of 2017 on 10-02-2017

⁸ (2000) 7 SCC 543

does not come in the way of petitioner being granted relief in this writ Petition.

41. Accordingly, W.V.M.P.No.4714 of 2016 and W.V.M.P.No.1473 of 2017 are both dismissed.

C.C.No.2124 of 2016

42. C.C.No.2124 of 2016 was filed by the petitioner to punish the 5th respondent in W.P.No.31004 of 2016/W.P.No.1123 of 2017 for violation of the order dt.19-09-2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016.

43. The Commissioner of Guntur Municipal Corporation (1st respondent in the Contempt Case) filed a counter stating that the 2nd respondent in the Contempt Case/4th respondent in the W.P.No.31004 of 2016 obtained permission on 26-08-2016 for construction of 3rd and 4th floors over existing G+2 floors from the Corporation and denied that there was any willful disobedience of the order passed by this Court. She pleaded that the petitioner was aware of the said permission and yet filed the Writ Petition suppressing the fact that 4th respondent had permission to make construction and therefore she cannot be punished for contempt. No material is placed by her to show that petitioner was aware of the grant of permission by the time the said W.P was filed.

44. I had already pointed out that it is impossible to excavate a cellar underneath an existing G+2 floor building and that the 4th

respondent had excavated a cellar and built *afresh* G+4 floors + pent house. He had not merely constructed 3rd and 4th floors on an existing old building of G+ 2 floors as is pleaded by respondents. In any event it is not disputed that pent house was built and the cellar were excavated without any permission.

45. The Commissioner has no answer to the question why she had not even issued a notice for the said constructions between 19-09-2016 and 10-02-2017 (when the 4th respondent filed W.P.No.4581 of 2017 and obtained interim order suppressing the existence of interim order dt.19-09-2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016). Thus the conduct of the Commissioner of the Guntur Municipal Corporation is not *bona fide*. I have already held that she colluded with 4th respondent in the W.Ps/2nd respondent in the CC.

46. The learned counsel for 2nd respondent in the Contempt Case/4th respondent in the Writ Petitions adopted the said contentions of the Commissioner and the stand already taken in the W.V.M.P.No.4714 of 2016 filed by him in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016.

47. I have already dealt with the same while rejecting W.V.M.P.No.4714 of 2016. I have also held that there is collusion between both the respondents and that both of them have filed false affidavits and tried to mislead the Court.

48. For the aforesaid reasons, I hold that both the respondents in the Contempt Case have willfully and deliberately disobeyed the order dt.19-09-2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016 and they have also filed false affidavits in the Court.

W.P.No.1123 of 2017

49. After coming to know of the permission granted on 26-08-2016 by 2nd respondent to 4th respondent to erect 3rd and 4th floors in the premises of the 4th respondent, petitioner filed W.P.No.1123 of 2017 to question the same.

50. He reiterated the allegations made by him in W.P.No.31004 of 2016 and contended that he had obtained an order on 19-09-2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016 against the 2nd respondent to stop further construction by 4th respondent and violating the said order, the 4th respondent with the active collusion of respondent Nos.2 and 5, proceeded to make constructions of 4th floor as well as pent house and he had filed C.C.No.2124 of 2016 against them.

51. He pointed out that the impugned building permission indicates that 4th respondent applied for building permission on 29-04-2016, but this is false because no such averment was made in the counter affidavit filed by 4th respondent in the W.P.No.31004 of 2016

and that reliance had been placed by 4th respondent therein only on order dt.28-06-2016 therein.

52. He further pointed out that 4th respondent even completed 6th floor slab and the building stands 66 ft. height (20.10 mts) and it amounts to a high-rise building as defined in Rule 2(f) of the A.P. Building Rules, 2012 and that special norms specified in Rule 7 require to be followed. In particular, he contended that for such a high-rise building, the minimum size of plot must be 2000 sq. mts. while the 4th respondent's plot is only 586.94 sq. mts. as per the building permission. Therefore the very grant of permission for a high-rise building in such a small plot is contrary to law and invalid.

53. He contended that the building height was wrongly shown as 11.75 mts purposefully by 2nd respondent to help 4th respondent even though it comprises 6 floors and would be more than 60 feet.

54. He also stated that for a 6 floor building of height 66 feet, set back on all sides should be 7 mts equal to 22.96 ft but as per the permit granted on 26-08-2016 to 4th respondent by 2nd respondent, set backs shown are 3.2 mts (front), 3.5 mts (rear), 3.51 mts (side 1) and 3.49 mts (side 2) and this violates Rule 7(x) of the A.P. Building Rules, 2012.

55. The matter was listed before this Court on 02-03-2017, 24-03-2017, 03-04-2017, 04-04-2017 along with W.P.No.31004 of

2016 and though the 4th respondent had ample time of about a month to file counter-affidavit, he has not chosen to file any counter-affidavit. Therefore the allegations made by petitioner are deemed to be admitted by him.

56. The respondent Nos.2 and 5 filed a counter stating that the 4th respondent applied for regularization of the building constructed by him under the Building Penalization Scheme introduced by the Government Vide G.O.Ms.No.128 MA & UD dt.22.5.2015 and obtained regularization orders through online proceedings dt.27-09-2016 in BPS/GUN/MO/21/6730515 subject to the condition that *“No field inspection is done by any authority. This proceeding is issued purely on the basis of information furnished by the applicant. Hence any future discovery of any wrong information, the applicant is liable for penal action besides rendering this proceeding void”*. Copy of the regularization order has not been placed on record by respondents.

57. Firstly the Building Penalization Scheme introduced by the Government Vide G.O.Ms.No.128 MA & UD dt.22.5.2015 (called the “A.P. Regulation and Penalization of unauthorizedly constructed buildings and buildings constructed in deviation of the sanctioned plan Rules, 2015”) applied only for constructions made between 1.1.1985 and 31.12.2014. Building applications were to be made within 2 months from 27.5.2015. It is not the case of respondent no.s2/5 that 4th respondent made application for regularization within

that time. It therefore does not apply to brand new construction made in 2016 by 4th respondent.

58. The respondent no.2/5 have not even stated when the 4th respondent applied for the regularization of the construction and have deliberately suppressed the same with a view to help 4th respondent.

59. Secondly, Clause 11 of the G.O.Ms No.128 mandated an inspection by competent authority before granting regularization. So the order of regularization granted to 4th respondent even without inspection is contrary to the G.O. and is therefore illegal.

60. Thirdly, in counter affidavits filed by respondent no.s 2/5 in W.P.31004/2016 and in the CC.No.2124 of 2016, there is no mention of this regularization order. It shows that it was created only after the filing of this W.P. and was in fact not issued on 27.9.2016.

61. This shows the lengths to which the respondent no.s2/5 would go to help the 4th respondent.

62. In **Friends Colony Development Committee (5 supra)**, the Supreme court held:

“25. Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less

than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum.”

63. In my opinion, in the present case, since the excavation of cellar, construction of G +2 floors afresh by 4th respondent is totally without permission, there is no question of condoning the same at all.

64. I therefore hold that the said regularization order is clearly issued in collusion with 4th respondent and is contrary to law and invalid.

65. Though reference is made to a report dt.16-04-2016 and notices dt.22-04-2016 and 02-05-2016 in the counter by respondent No.5, copies of the same have not been filed. In any event these have no bearing on the validity of the permission granted on 26-08-2016 to 4th respondent by 2nd respondent.

66. The contention in para-14 of the counter that 2nd respondent, having obstructed the construction of building over 4th floor, the question of the applicability of High-Rise Building Rules will not arise and that 4th respondent had applied for online permission for a building of height below 15 mts, is not tenable, because admittedly there was no inspection done by the officials of 2nd respondent of the height of the building actually erected by 4th respondent. Without determining the height of the building, it is not open to 2nd respondent to say that the said Rules do not apply.

67. In para-22, the 2nd respondent stated that in the counter that the construction permission granted to 4th respondent was revoked on 03-02-2017 after noticing several deviations being made by 4th respondent and on account of misrepresentation of facts by him. The following deviations were admittedly noticed according to 2nd respondent:

“a) 4th respondent did not produce NOC from Director General of Fire Services Department as per A.P. Building Rules, 2012 and G.O.Ms.No.154 MA & UD Department dt.13-03-2007;

b) In the approved plan, the existing cellar floor details was not shown;

(c) the proposed parking area is 342.72 sq. mts. as against required parking of 354.2 sq. mts;

d) the site affected under widening of 60 feet wide Master Plan road was not handed over to the Corporation through gift deed;

e) 10% of the total built-up area was not mortgaged in favour of the Corporation.”

68. In view of the reason given now that 4th respondent did not get NOC from the Fire Services department, the petitioner's allegation stands proved. No material is placed by 4th respondent to refute any of the other allegations either.

69. The revocation order dt.3.2.2017 of respondent No.2/5 is a highly belated action and does not in any way absolve respondent

No.5 from wrong doing in relation to the activities of the 4th respondent in making illegal constructions in his premises.

70. Having regard to the above circumstances, since the Commissioner, Guntur Municipal Corporation and the 4th respondent have been found to have colluded together, filed false affidavits to mislead the Court, in the interest of justice, the following order is passed:

- a) W.P.No.31004 of 2016, C.C.No.2124 of 2016 and W.P.No.1123 of 2017 are allowed;
- b) Order in Roc.No.5005/2016/G2 dt.28-06-2016 of the Commissioner, Guntur Municipal Corporation issued on behalf of the said Corporation is set aside as collusive and malafide;
- c) Building Permission No.1021/0890/B/GNTC/KOT/2016 dt.26-08-2016 issued by Guntur Municipal Corporation to 4th respondent is declared illegal, without jurisdiction, fraudulent, collusive and violative of the A.P. Building Rules, 2012;
- d) Order of Regularisation of the structure of the 4th respondent in NO/BPS/GUN/MO/21/6730515 dt.27-09-2016 of 2nd respondent is declared to be illegal, arbitrary, fraudulent and contrary to G.O.Ms.No.128 MA & UD Department dt.22-05-2015 and is set aside;
- e) The order in Ref.No.RVK/1021/2016/0006 dt.03-02-2017 passed by 2nd respondent revoking the approved plan issued vide File No.1021/0890/B/GNTC/KOT/2016

Permit No. 1021/0890/B/GNTC/KOT/2016 dt.26-08-2016 is upheld;

- f) The interim order dt.10-02-2017 in W.P.M.P.No.5530 of 2017 in W.P.No.4581 of 2017 is declared to be collusive and obtained by playing fraud on the Court, and hence, of no effect;
- g) Consequently, the respondent 1 is permitted to demolish the constructions made by 4th respondent in premises Door No.12-25-180, Kothapet, Guntur within four (04) weeks from today;
- h) The 4th respondent shall not alienate or encumber or put to use for any purpose the building illegally constructed by him in the above premises till it is demolished by the respondent no.1;
- i) The SHO of the Police station within whose jurisdiction the Door No.12-25-180, Kothapet, Guntur is located shall provide all assistance to the petitioner and ensure that 4th respondent does not prevent it's demolition;
- j) The Commissioner, Guntur Municipal Corporation (Ms. Selvarajan Nagalakshmi) as well as the 4th respondent are held guilty of filing false affidavits in W.P.No.31004 of 2016 and C.C.No.2124 of 2016 and of willfully disobeying the order dt.19-09-2016 in W.P.M.P.No.38372 of 2016 in W.P.No.31004 of 2016; the Commissioner, Guntur Municipal Corporation is sentenced to suffer one month Simple Imprisonment and 4th respondent is sentenced to 2 months Simple Imprisonment; they shall pay fine of Rs.2,000/- (Rupees Two Thousand only) within four weeks from today and in default, to suffer further Simple Imprisonment of one month;

- k) The petitioner shall deposit subsistence allowance @ Rs.300/- per day for respondent Nos.1 and 2 in the Contempt Case No.2124 of 2016 within four weeks from today;
- l) The sentence of imprisonment imposed on respondent Nos.1 and 2 in the C.C. No.2124 of 2016 is suspended for a period of six weeks from today;
- m) The respondent Nos.2 and 4 in W.P.No.31004 of 2016 and W.P.No.1123 of 2017 shall each pay to petitioner costs of Rs.20,000/- each.

As a sequel, the miscellaneous petitions, if any pending in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date:25-04-2017
kvrn

