

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No.44728 of 2016
and
Contempt Case No.214 of 2017

W.P. No.44728 of 2016:

Between

Padma Reddy and others

.... Petitioners

And

The State of Telangana,
Municipal Administration and Urban Development Department,
Secretariat, Saifabad, Hyderabad, rep. by its Principal Secretary
and others.

... Respondents

JUDGMENT PRONOUNCED ON : 19.09.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : NO
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.44728 of 2016
and
Contempt Case No.214 of 2017

Common Order:

The Writ Petition along with the Contempt Case arising there from are being disposed of by this common order.

The case of the petitioners is that they are neighbours of the house of respondents 5 and 6 in Housing Board Colony, Bahadurpura, Hyderabad. The respondents 5 and 6 are owners of the property in premises No.19-5-9/23, Housing Board Colony, Bahadurpura, Hyderabad, and obtained two permissions for construction of residential buildings consisting of ground and first floor. But, violating the said permission and without maintaining any setbacks as per the sanctioned plan, they constructed six floors over the ground floor. Thus, they have constructed five additional floors without any permission. They have also encroached upon the public road and made illegal construction. The representations of the petitioners to the official respondents on 18.04.2016, 19.04.2016, 08.05.2016, 11.06.2016 and 13.06.2016 even enclosing the photographs of illegal construction do not elicit proper response. They have uploaded the complaint in GHMC website also. They even got issued notices to the official respondents through their counsel on 08.11.2016 and 21.11.2016 and in spite of the same no action was taken. At that stage, they filed the present Writ Petition challenging the action of the respondents 2 to 4 in allowing the respondents 5 and 6 for making construction violating the sanctioned building permission.

This Court, by order dated 22.12.2016 while issuing notice before admission, directed the respondents 2 to 4 to see that the respondents 5 and 6 shall not make any unauthorized construction in their property.

Alleging violation of the said order, C.C.No.214 of 2017 was filed and notice before admission was issued on 17.02.2017. Learned Standing Counsel took notice on behalf of respondents 1 to 3 on 17.03.2017, but did not file any counter. On 31.03.2017 none appeared for the Contemnors. In those circumstances, the Contempt Case was admitted on 13.04.2017 against the third respondent, Assistant City Planner.

The third respondent, Assistant City Planner filed a counter affidavit on 13.04.2017 stating that they inspected the property of the unofficial respondents 5 and 6 (wrongly mentioned as respondents 4 and 5) from time to time in regular intervals in compliance with the orders passed in W.P.No.44728 of 2016 and did not find any fresh construction activity during their inspection. It is also stated that the Corporation is a law abiding body and never neglected the representations/legal notices of the petitioners.

A further counter affidavit was filed on 27.07.2017 when the third respondent, Assistant City Planner received a notice in Contempt Case, stating that the respondents 5 and 6 (wrongly mentioned as respondents 4 and 5) obtained two building permissions from the respondents 2 to 4 for construction of ground and first floor in terms of G.O.Ms.No.168, M.A., dated 07.04.2012, in two parts of the premises bearing No.19-5-9/23 of Bahadurpura, Hyderabad, vide permit dated 29.10.2015 in File No.45861/09/10/2015/CO-5. They commenced the construction work without issuing notice under Section 440 of HMC Act, 1955 by clubbing the said two building permissions violating the law. The respondents 2 to

4 admitted the receipt of complaints with regard to unauthorized construction. On receipt of the complaints, they inspected the site and noticed that the respondents 5 and 6 are making construction by clubbing the two separate building permissions and two separate properties. Immediately, two show cause notices were issued under Sections 452(1) and 461(1) of the HMC Act, 1955 on 18.05.2016 by following due process of law to them. But, they did not submit any ownership documents or relevant permission documents nor given any reply to the show cause notice. A second notice was issued under Section 452(2) of the HMC Act on 25.04.2016 stating that further action would be taken as per Section 636/596/461(4)/461-A of the HMC Act, 1955. By the time when the respondents 2 to 4 wanted to proceed further, the respondents 5 and 6 approached the learned VI Junior Civil Judge, City Civil Court, Hyderabad and obtained interim *status quo* orders in I.A.No.387 of 2016 in O.S.No.1291 of 2016 on 02.06.2016 by misrepresenting and suppressing the facts. Even after obtaining *status quo* orders on 02.06.2016, they proceeded with the construction in violation of the two separate sanctioned plans. A letter was issued on 15.06.2016 bringing to their notice the violation of *status quo* orders and directing them to stop further construction work. Since they were making construction work during night hours, a letter was addressed to the Station House Officer, Bahadurpura Police Station on 15.06.2016 requesting them to stop the ongoing construction during night time by violating the *status quo* orders passed by the Civil Court. In spite of the same, they proceeded with the construction work and made Ground, 1 to 4 Floors illegally. In view of the orders of *status quo*, they could not take further action. They filed a counter in the pending Civil Suit and they would take further course of

action after disposal of the application in the pending suit. When a notice was received in the present case on 22.12.2016, the site was inspected and in view of the construction of four floors a notice was issued on 29.12.2016 to the respondents 5 and 6 not to proceed with any type of construction. In spite of the same, when they went ahead with further construction, one more letter was issued on 16.03.2017 reminding about the court orders and to stop construction work immediately. One more letter was addressed to Station House Officer, Bahadurpura Police Station on 16.05.2017 to keep a watch over the fresh constructions. They also issued letters to the TSSPDCL and Hyderabad Metro Water Supply not to give electricity and water connection to the said premises. Since the respondents 5 and 6 are going ahead with the construction, the Corporation issued a final notice under Section 636 of the HMC Act on 14.06.2017 and demolished the unauthorized construction/deviations to the sanctioned plan as per the said notice. But the photographs filed along with the memo dated 17.08.2017 also did not indicate the complete removal of unauthorized floors from the above premises.

An additional counter affidavit was filed in June 2017 stating that they never violated the orders of this Court dated 22.12.2016 nor shown any willful disobedience to the said order and since they have already expressed their unconditional apology in the main counter for any inadvertent violation, they should be excused.

In view of the symbolic demolition that has taken place and since this Court was not satisfied, it called for a counter from the Station House Officer, Bahadurpura, Hyderabad. The police stated that in the absence of any order from the Civil Court, as they cannot interfere with the civil disputes, they have informed the Assistant City Planer to instruct the

petitioners to obtain specific orders from the Civil Court to provide police aid to implement the *status quo* orders. The officials of the Corporation are under obligation to stop the illegal construction and they cannot throw blame on the police for their failure. The police can only assist the authorities as and when required. When a letter was received by them on 25.05.2017, a night patrol was carried out and it does not indicate any construction activity during night hours.

The respondents 5 and 6 filed a memo on 23.06.2017 stating that the Assistant City Planner, Circle - V, GHMC, Hyderabad came under police security to the site and demolished the structures without any prior intimation or notice on 21.06.2017 and as such the Contempt Case has become infructuous. They filed photographs of the demolished structures. They sought closure of the Contempt Case. Thereafter, none appeared on behalf of the respondents 5 and 6. Even the photographs filed also do not indicate the complete removal of the unauthorized floors.

The above facts would clearly show that the respondents 5 and 6, after obtaining permission for construction of Ground + First Floor have unauthorizedly raised three floors above the same. In spite of several representations of the petitioners no proper action was taken by the official respondents. The order of the Civil Court in I.A.No.387 of 2016 in O.S.No.1291 of 2016 also speaks of maintenance of *status quo*, when the construction in the schedule properties is under progress in accordance with the sanctioned plan.

The photographs filed along with the counter affidavit also do not disclose the removal of unauthorized additional floors. In those circumstances, the learned counsel appearing for the respondents 2 and 3 undertook to implement the order in accordance with the directions of this

Court and that of the Civil Court and report compliance vide his undertaking dated 28.07.2017. As stated above, the photographs filed on 17.08.2017 do not show the complete removal of the floors except making holes in some floors. It is a common knowledge that several unauthorized structures are coming up in the city due to laxity of the Corporation officials. The civil Court in its order never restrained the respondents from taking action according to law. In spite of the same, they did not take any action and only when the present Contempt Case was initiated, they chose to file counter giving evasive reply. When this Court adjourned the case from time to time, the third respondent took some symbolic action. But, no action was taken to completely remove the unauthorized structures. The correspondence filed in the instant case indicated that even after passing the order by this Court there was construction by the unofficial respondents and the third respondent washed off his hands by intimating to the police to see that the unofficial respondents do not make construction during night time. The Station House Officer filed counter categorically stating that it is the duty of the Corporation officials to see that the construction do not take place and they cannot throw blame on the police.

A perusal of the photographs clearly indicates that the unauthorized structures were completely raised, plastered and painted. The entire thing cannot take place during night time as alleged.

In view of the above, the Writ Petition is allowed and the respondents 3 and 4 in the Writ Petition are directed to completely remove the unauthorized structures raised by the respondents 5 and 6 within a period of three (3) months from the date of receipt of a copy of this order. In view of the action taken by the third respondent, the

further proceedings in the Contempt Case are dropped for the time being and the Contempt Case is closed. If the petitioners noticed that the unauthorized structures are not completely removed within three months, it is open to the petitioners to file fresh Contempt Case pursuant to the order passed in the present Writ Petition. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in the Writ Petition as well as in the Contempt Case shall stand closed.

Date: 19th September, 2017
Nsr

A. RAMALINGESWARA RAO, J

