

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.7680 OF 2016

% 14th March, 2017

Guntuka Raja Ram, S/o Rajalingam, Age: 52 Years, Occ: Mechanic, R/o H.No.1-4-178/1, Desainagar, Korutla proper and Mandal, Karimnagar District.

... Petitioner..

AND

\$ The State of Telangana represented by its Principal Secretary to the Municipal Administration, Secretariat Buildings, Hyderabad and another.

... Respondents

! Counsel for the Petitioner : Sri Sreenivasa Rao Velivela

^ Counsel for the 1st respondent : Government Pleader for Municipal Administration

^ Counsel for the 2nd respondent : Sri N. Praveen Kumar

^ Counsel for the 3rd respondent : Sri Polisetty Radha Krishna

< Gist:

> Head Note:

? Cases referred:

- 1) 2008 (1) ALD 792
- 2) 2006 (5) ALT 582
- 3) 2008 (1) ALD 792

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.7680 OF 2016

ORDER:

The order dated 21.12.2015, refusing to grant building permission for the petitioner for making construction in an extent of 109.62 Sq.yards, situated in Sy.No.1266/1, Premises No.1-4-178/1 of Desainagar, Korutla, with a direction to the respective parties to approach the civil courts and settle the civil disputes, is challenged before this Court.

Learned counsel for the petitioner, while tracing title with respect to the property in Sy.No.1266/1, submits that the respondent Commissioner ought not to have rejected, merely on account of the objections raised by the implead petitioner disputing the title. To support his contention, learned counsel for the petitioner copiously points out various developments, which have taken place right from his purchase by way of registered sale deed dated 25.07.2001 and thereafter mutation proceedings were effected in his favour on 07.06.2008 and a challenge to the cancellation of the said mutation proceedings etcetera. He further submits that after his challenge to the cancellation of the mutation proceedings the same were finally set aside by this court vide order dated 12.03.2014 passed in W.P.No.12713 of 2009, and that the said order became final. Learned counsel for the petitioner also asserts that in the said Writ Petition implead petitioner's grandmother was a party, through whom the implead petitioner claims title over the property. Petitioner made an application for grant of building permission on 06.10.2015, which came to be rejected merely on account of the objections raised by the implead

petitioner, that too without considering the fact that the implead petitioner came to acquire the property only on 16.10.2015 through registered Gift Deed, alleged to have been executed by her father. Learned counsel for the petitioner had placed reliance on **K. Pavan Raj v Municipal Corporation of Hyderabad, Hyderabad and others¹**.

On the other hand, learned counsel for the implead petitioner submits that the petitioner claim is in relation to Sy.No.1266/1 of Korutla Village, over an extent of 109.62 sq.yards, whereas, the claim of the implead petitioner is with respect to the Sy.No.1272, over an extent of 168.89 sq.yardsd or 141.36 sq.mtrs., While the Sy.No.1272 is abutting to N.H.63 road, as per the tonch map furnished by the Survey Department, Sy.No.1266/1 is behind the Sy.No.1272, which is facing the NH-63 road. The implead petitioner had placed all these material before the authorities. It is also submitted by the learned counsel for the implead petitioner that the writ petitioner had made a claim seeking for regularisation with respect to the property by filing BRS application on 06.10.2015, wherein, he had mentioned in the application with regard to location as 1266/1 facing NH-63 road side, which is a false statement. In other words, the sum and substance of the learned counsel for the implead petitioner is that there is a dispute with regard to identification of the property in Sy.Nos. 1266 and 1272, and thus opposed any direction being issued in favour of the petitioner for granting of building permission.

Having considered the respective submissions, the question which falls for consideration in the present case is that 'Whether

¹ 2008 (1) ALD 792

the action of the respondent-commissioner in rejecting to grant building permission in favour of the petitioner, with a direction to the respective parties to approach the Civil Court to sort out the disputes with respect to the title, is arbitrary and illegal'. One of the other things which also requires to be decided is whether the order of the Commissioner in rejecting building permission on the ground of there being title dispute is justiciable, if so, to what extent.

In the present set of facts, as narrated in the impugned order it is disclosed that there are serious disputes with regard to the title between the petitioner and the implead petitioner and the same is evident from various proceedings taken place between both the parties before the Court, starting from 2008 onwards. As the Commissioner, being not well versed with law and legal intricacies, has taken care of obtaining legal opinion from the learned standing counsel, GHMC and basing on the said legal opinion, the commissioner had come to the conclusion that there exists a serious dispute with respect to the title and enjoyment of the petitioner with respect to the land, over which the petitioner claims building permission. In such circumstances, it cannot be said that the Commissioner had erred in delegating the parties to the Civil Court, as it is not possible for the Commissioner to come to a conclusion, who has superior title, that is, either the petitioner or the implead petitioner.

It may be noted that in the judgment reported in **T. Rameshwar v. Commissioner, Municipal Corporation of Hyderabad and others**², adverting to the cases in which there

² 2006(5) ALT 582

exists civil disputes, this Court had quoted its earlier decision dated 24.11.2003 in W.P.No.3979 of 2003. In the said judgment, this Court had opined that “when the dispute is *sub judice*, it shall be the duty of the Commissioner to postpone the permission, that the public authority must respect the court decision and implement it or aid in implementing the same.” Similar view was reiterated in a judgment reported in **K. Pavan Raj vs. Municipal Corporation of Hyderabad, Hyderabad and others**³.

In the very nature of the power exercised by the Commissioner and the parameters that are required to be considered in granting permission while exercising such power, the Commissioner is only required to examine the *prima facie* title of the applicant and if there is any doubt or any objection of serious nature is received, it may be desirable for him to obtain legal opinion to come to a conclusion as to whether the dispute in relation to title is of a serious nature and based on such legal opinion, the Commissioner may take a decision either to grant or reject the permission for construction. However, it may be cautioned that the legal opinion which the Commissioner may seek is not for coming to a conclusion between the two claimants who has superior title but only for the purpose of ascertaining as to whether there was a serious triable dispute between the parties. In which event, the Commissioner is bound to relegate the parties to approach the civil courts for the purpose of resolving the title dispute. In other words, the order of the Commissioner either granting or rejecting permission is justifiable only to a limited

³ 2008(1) ALD 792

extent on a narrow ground of whether the decision making process of the Commissioner vitiated and not the decision by itself.

In those circumstances, there is no arbitrariness or illegality in the order passed by the respondent authorities and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Consequently, the Miscellaneous Petitions, if any pending, shall stand dismissed.

Date:14.03.2017.
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CHALLA KODANDA RAM, J