

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.28933 OF 2016

ORDER:

This Writ Petition is filed seeking the following relief:

“....to pass an order or orders one in the nature of Writ of Certiorari to quash the impugned notice in Lr.No.316/5/14/ACP/C5/SZ/GHMC/2016, dated 19.08.2016 issued by the respondent No.3 in respect of property bearing No.14-5-314 to 316 admeasuring 18 sq.yards out of 285.63 sq.yards situated at Shah Inajaythgunj, Hyderabad by calling the entire records from the office of the 3rd respondent and declare the same as illegal, against law, violation of principles of natural justice and against the provisions of GHMC Act and Article300-A of the Constitution of India in view of the judgment and decree of the Civil Court passed in O.S.No.1580/2015, dated 08.08.2016 by the Hon'ble VI Junior Civil Judge, City Civil Court at Hyderabad and pass such other order or orders as the Hon'ble Court may deem fit in the circumstances of the case.”

On 29.08.2016, this Court while granting interim stay, as prayed for, has made it clear that no new constructions in the subject property except carrying on repairs, if any, to the existing structure. Vide order dated 17.02.2017, passed in W.P.M.P.No.52340 of 2016, 4th respondent was impleaded himself. On 17.02.2017, based on the material placed before this Court, noticing that construction has been made in spite of the order of this Court, dated 29.08.2016, respondent authorities were directed to take necessary steps to remove all the encroachments made by the petitioner forthwith, with a direction to report compliance by 23.02.2017. Thereafter, counter affidavit filed on behalf of the 2nd respondent, by the Assistant City Planner, stating that the authorities have received complaint on 19.06.2015 from the

locality members of Shah Inayat Gunj, Hyderabad, stating that the owner in premises bearing Municipal No.14-5-316 has encroached the municipal public road, in front of his gate, over an extent of 20/20 feet. On that the Corporation authorities on 24.06.2015 demolished the illegally raised temporary structures. Once again another complaint was received on 03.08.2016 complaining that the petitioner erected blue tin sheets, height about 12 feet, and the petitioner has approached City Civil Court by filing O.S.No.1580 of 2015 and on 20.07.2015 obtained status quo orders in I.A.No.511 of 2015 in O.S.No.1580 of 2015. In view of the said status quo orders, respondents could not take immediate action, however on contest the main suit itself was disposed on 08.08.2016, with the following observation:

“Judgment pronounced in Open court. V.S.J. in the result, the suit is decreed without costs by granting perpetual injunction in favour of plaintiff for residential, if old structure is existing and only repairs are being carried out by the plaintiffs over the suit schedule properties and if the GHMC finds any new construction over the suit schedule properties, then the defendants is at liberty to proceed against plaintiffs new construction by following due process of law.”

After receiving clarification from the Tahasildar, with respect to the TSLR records and considering that the petitioner had occupied GVM road, a notice dated 19.08.2016 was issued to the petitioner to remove the illegal encroachments in front of his house and simultaneously a complaint was also lodged with the Station House Officer, Shah Inayath Gunj Police Station, Hyderabad, to stop the constructions being made by the petitioner. The petitioner submitted his explanation dated 21.08.2016 stating that

he had filed an application seeking regularisation in terms of G.O.Ms.No.152, dated 02.11.2015 and not being satisfied with the explanation submitted by the petitioner, issued a notice dated 02.09.2016, under Section 402 of HMC At, 1955, with a direction to the petitioner to remove the unauthorised constructions within three days. As a matter of fact, on 03.09.2016 request was also made to the Station House Officer, Shah Inayath Gunj Police Station to give police aid to carry on the demolition.

4th respondent, implead petitioner, also filed counter affidavit stating that the petitioner had obtained *ex parte* stay order by misrepresenting the facts and he had raised new constructions by encroaching the public road. The small bit of land, which the writ petitioner claims, is a public road and the same is evident from the material available for more than 12 years. As a matter of fact, on 19.06.2015 the locality people gave complaint to the official respondents to take necessary action against the tin shed construction made by the petitioner, and the said illegal constructions were demolished by the official respondents on 24.06.2015, which is evident from the photographs filed. However, the petitioner again started construction under the guise of challenge to the notice dated 19.08.2016 issued by the 3rd respondent-Assistant City Planner.

Heard the learned counsel for the petitioner and the learned standing counsel Sri Neeli Ashok Kumar, for the Corporation and the learned counsel for the implead petitioner.

Material placed before this Court, *prima facie*, discloses that on earlier occasion an attempt was made by the petitioner to raise an illegal construction, but the same was dismantled on

24.06.2015. Thereafter, petitioner filed O.S.No.1580 of 2015 before the VI Junior Civil Judge, City Civil Court at Hyderabad, and obtained *status quo* order on 20.07.2015. As on the date of *status quo* order, it is clear from the material placed before this Court, particularly, the photographs filed by the implead petitioner that even as on 18.08.2016 there was no construction, but the preparations were in progress for constructions. The photographs, dated 09.11.2016, disclose total construction has been completed. The judgment dated 08.08.2016, passed by the City Civil Court, discloses that a representation was made before the Court that repairs are being carried out to the old structure and in that context only the Court decreed the suit, interdicting the respondents with a caveat that if any new construction is being made, the respondents are at liberty to proceed against the petitioner's new construction by following due process of law. In another onwards, by misrepresenting before the Court, the petitioner had carried out construction and completed the same by 09.11.2016. Admittedly, there is no permission obtained from the respondent authorities. The contention of the learned counsel for the petitioner is that no permission, as such, is required as the site under which the construction is being made only in 18 square yards. In view of the G.O.Ms.No.483, dated 24.08.1998 as modified in G.O.Ms.No.168, dated 09.04.2012, the contention of the learned counsel for the petitioner cannot be accepted, as the necessary conditions under G.O.Ms.No.168, are admittedly not satisfied. Under G.O.Ms.No.168, proper intimation has to be given to the respondent authorities with necessary documents. As per the petitioner, he filed an application seeking regularisation of the

structure by filing BRS application dated 26.12.2015. The alleged application under BRS itself has been made on false grounds, as is evident from the fact, that even as on 08.08.2016, the date on which the Civil Court passed decree in O.S.No.1580 of 2015, there was no construction. In those circumstances, the question of filing BRS application could not have arisen. In the guise of challenge to the notice dated 19.08.2016, petitioner cannot seek protection of illegal constructions made, totally in utter violation, and further making false claims before this Court as well as before the Civil Court. In the circumstances, the respondent shall be at liberty to take action to remove the illegal structures of the petitioner by passing final orders pursuant to the notice issued and after considering the explanation submitted by the petitioner on 21.08.2016.

With the above direction, the writ petition is disposed of. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date:21.03.2017.

Ssv