

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 24081 of 2013 and 8376 of 2015

COMMON ORDER:

1) W.P.No.24081 of 2013 came to be filed, questioning the building permissions granted by respondent No.2, vide proceedings B.A.No.667/ 2011/ G2 dated 30.03.2012, in favour of respondent Nos.4 and 5 and B.A.No.669/ 2011/ G dated 30.03.2012 in favour of respondent Nos.4 and 6 in respect of houses bearing Door Nos.6-1-51/ 2 and 6-1-51/ 2A, situated in T.S.No.849 (P), Block No.23, Ward No.1, Jawahar Street, Suryaraopeta, Kakinada, East Godavari District; and consequently to demolish the structures made therein.

2) W.P.No.8376 of 2015 came to be filed seeking issuance of writ of mandamus declaring the action of respondent No.2 in not considering the application of the petitioner (respondent No.4 in W.P.No.24081 of 2013) for issuance of occupancy certificate under Rule 26 of the Andhra Pradesh Building Rules, 2012, as illegal, void and violative of the statutory mandate; and consequently to direct the respondent No.2 to consider the application made for issuance of occupancy certificate.

3) Since the issue involved in both the writ petitions is interconnected, they are disposed of by this common order.

4) The facts are as under:

The petitioners in W.P.No.24081 of 2013 are resident of Door No.6-1-51 and 11-5-1/11 in Ward No.8, Block No.6, Jawahar Nagar, Suryaraopet, Kakinada, East Godavari District. The old house of respondent No.4 (petitioner in W.P.No.8376 of 2015) bearing Door Nos. 6-1-51/2 and 6-1-51/2A, which was situated in between the house of the writ petitioners, was demolished. The entire extent of the land of respondent No.4 is 1640 square yards and the dimension being 57 x 23 meters. The averments in the affidavit would show that lay out made in Suryaraopet is an approved one. While so, the respondent No.4, who is the owner of the property, gave the said site for development to respondent No.7. As the said piece of land is not a narrow site and with a view to give a go-bye to the mandatory requirements, for raising a multi-level building, the respondent No.4, on her own divided the said plot into two narrow plots and then applied for two separate building permissions in the name of respondent Nos.5 and 6. The petitioner gave representations dated 21.01.2013, 01.03.2013 and

02.03.2013, informing the authorities concerned about the violation of the Rules and Circulars, but to no avail.

It is to be noted here that if a building is to be raised in a plot admeasuring 1640 square yards, one should comply with the following mandatory requirements:

- (a) provide 20% of the built-up area for parking,
- (b) additional 10% area for visitors' parking under Rule 10 (viii) under G.O.Ms.No.111, dated 05.03.1995,
- c) leave four meters setoff on the front side and 5 meters setoff on other three sides.
- d) obtain prior permission from the Fire Department.

It is also to be noted that in respect of a plot admeasuring 750 meters and above, Fire Safety Rules should be strictly implemented, so as to enable the fire engine to negotiate all around the building. In order to avoid compliance of mandatory requirements, two building plans came to be submitted before respondent Nos.2 and 3. A perusal of the building plans would show that building permissions were granted on 30.03.2012, invoking clause 7.1 (f) (xiii) of G.O.Ms.No.302, dated 15.04.2008. The averments in the affidavit would further indicate that by one stroke, all the parameters that are required to be followed for construction of a building in the site, have been changed. It is said that in view of the reduction in size of the plot, the

setbacks which have to be left, will only be one meter on all sides. Hence, W.P.No.24081 of 2013 came to be filed challenging the very grant of permissions.

5) By an order dated 31.10.2014, this Court, while admitting the W.P.No.24081 of 2013 passed the following interim order:

“No counter affidavit is filed by respondent Nos.4 to 8 as well as Municipal Corporation, Kakinada. *Prima facie*, the allegations in the writ petition stand un rebutted. Therefore, there shall be interim direction as prayed for.”

6) Respondent No.7 filed counter along with vacate stay petition stating that earlier the writ petitioners filed W.P.No.11135 of 2013 in which respondent No.7 filed a detailed counter. It is urged that since the issue in both the writ petitions is one and the same, the counter which was filed in the said writ petition may be read as part of the counter filed in the present writ petition. However, it is stated in the counter affidavit that there is no illegality committed by the official respondents in granting permission for raising two independent structures. It is said that since the said plot is a part of an approved lay out, there is no bar to divide the same into two pieces vertically. It is said that once there is a division of the entire plot into two, each

portion of the plot is to be considered as a narrow site. In the absence of any law prohibiting division, it is urged that the action of the authority in granting permission and the action of respondent No.7 in raising constructions cannot be found fault with. It is further stated that even if there is any irregularity, such irregularity can be rectified by resorting to appropriate remedies provided under the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act") and the Rules made thereunder. It is therefore stated that in the absence of any rule or law, the action of the official respondents cannot be said to be illegal and improper.

7) Respondent Nos.2 and 3, official respondents, also filed counter along with the vacate stay petition, stating that on 02.12.2011, respondent No.5 submitted an application for approval of the building plan in the name of M/s. Patchala Homes, which was approved on 30.03.2012. On the same day, respondent No.6 also made an application in the name of M/s. Laxmi Ganapathi Builders, seeking permission to construct Stilit+Ground Floor+ 4 upper floors. The size of the plots in both the applications was shown as 11.58 x 57.83 square meters. It is said that invoking clause 7.1 (f) (xiii) of G.O.Ms.No.302, dated 15.04.2008, the building plans submitted by both the parties have been approved, hence

urged that there is nothing wrong in approving the building plans. In Para No.4 of the counter it has been stated that two separate owners have approached the respondents for approval of building plans and as per the Rules, the respondents have approved those plans. While denying the other allegations made in the affidavit, it is stated that there are no merits in the writ petition and the same is liable to be dismissed.

8) A reply came to be filed by the writ petition disputing the averments made in the counter for which a rejoinder is also filed.

9) As seen from the record, the main dispute is whether respondent Nos.2 and 3 were justified in invoking G.O.Ms.No.302, while granting approval for the two building plans, which were submitted separately by two different developers, showing one plot as two narrow plots.

10) There is no dispute that the lay out in which this plot is situated is in an approved layout. Respondent No.4 is the owner of the entire extent of land admeasuring 1640 square yards. It is not in dispute that the said plot was divided into two plots by respondent No.4, on her own, and thereafter entered into two agreements with respondent Nos.5 and 6, for development of the two plots. Thereafter two

applications along with building plans, seeking permission for raising two independent structures, came to be made, showing the extent of land in each site as 685.53 square meters (800 square yards). The building plans which are placed before the Court would show that to the north of the first approved plan, the plot of respondent No.6 herein is shown, where as in the second building plan the plot of respondent No.5 is shown on the southern side of the first approved plan. Though the name of respondent No.4 is shown as the owner of the plots but the total extent of plot (1640 square yards) is not shown in each plan. If the entire plot area admeasuring 53 x 23 meters was shown while applying for building permission, then the setbacks to be left open would be different. The said plot is now made into two narrow plots admeasuring 53 x 11 ½ meters each, thereby enabling them to leave setback of only one meter, as per the guidelines laid down in clause 7.1 (f) (xiii) of G.O.Ms.No.302, dated 15.04.2008.

11) Learned counsel for the petitioner mainly submits that the process adopted by respondent Nos.2 and 3 in approving the building plan showing the setback as one meter, as per G.O.Ms.No.302, is totally contrary to the provisions of the Act and the same has been done only to defeat the provisions of the Act and the circulars issued from time to time. The said

argument though refuted by the learned counsel for the respondents, cannot be brushed aside. As stated earlier, in each building plan, the total area was shown as only 685.53 square meters (about 800 square yards) where as the total extent of plot is about 1640 square yards. Though two different applications came to be filed by two different firms, but the construction of both the buildings was taken up by respondent No.7. The record also shows that basement of the two buildings was connected. The learned counsel for respondent No.7 would submit that there is nothing wrong in connecting the basement and in the absence of any connection between the two blocks above the surface, it is urged that making two different applications for two different buildings, leaving one meter setback, is not illegal.

12) It is to be noted that if a single building is raised in a plot admeasuring 1640 square yards, the setbacks to be left are four meters in the front and five meters on other three sides apart from certain other restrictions. If the two independent buildings are to be raised by dividing the plot into two narrow plots, it would be sufficient if a setback of one meter is left.

13) The argument of the learned counsel for respondent No.7 is that there is no bar to divide the said plot into two

narrow plots and in the absence of any Rules or Guidelines to that effect, the petitioners have no right to question the approval granted by the official respondents.

14) At this stage it would be useful to refer to Section 388 of the Act which reads as under:

“388. Notice to be given to Commissioner of intention to lay out lands for building and for private streets: Every person who intends

(a) to sell or let on lease any land subject to a covenant or agreement on the part of a purchaser or lessee to erect buildings thereon,

(b) to divide land (whether unbuilt or partly built) into building plots.”

15) A perusal of the record and Section 388 of the Act amply establish that sub-division of plot, even in an approved layout can only be done by making a proper application or notice to the Commissioner. The same is lacking in the instant case. Without following the mandate of Section 388 of the Act, the owner herself divided a wide plot into two narrow plots and applied for permission to raise two independent multi-level structures, without leaving setbacks.

16) The purpose of sections 388 to 391 of the Act, came up for consideration before a Division Bench of this Court in

*K. Vivek Reddy v. State of Andhra Pradesh*¹. It was a case where originally one Syed Omer purchased land admeasuring 1197 square yards, divided the said plot into two plots and sold the same to two different persons ie. respondent Nos.4 and 5 therein, on the same day. Respondent Nos.4 and 5 obtained separate building permits in respect of the aforesaid extents purchased by them. The issues in the said judgment was “Whether the sub-division of the premises is legal and valid; and whether building permits granted to respondent Nos.4 and 5 are legal and valid.” Dealing with the said issues, a Division Bench of this Court held as under:

“The deemed sub-division would not entitle the respondents to use the land without observing the norms/ standards which would include providing passage for movement of a Fire Engine and any violation, the state/ GHMC shall be free to deal with non-compliance of the conditionalities, as also provisions of the rules.

Relying upon the judgment of the Apex Court in *Consumer Action Group v. State of Tamil Nadu*² this Court held as under:

“Violation and relaxation of building norms would result in undue strain on the civic amenities such as water, electricity, drainage etc., Waiver of setbacks inevitably hampers fire fighting measures endangering the lives of the occupants of such buildings. The authorities therefore have to strike a balance so as to permit exercise of the

¹ (2010) 6 ALT 360

² (2000) 7 SCC 425

individual right of an owner to make constructions on his land without compromising on the community good. The exceptional discretionary power vested in the sanctioning authority under Rule 7.1 (xiv) must therefore be exercised in genuine cases so as to alleviate the plight of 'narrow plot' owners. It is not for coming to the aid of commercial builders who cite global recession and downward trends in the realty sector as reasons for invoking the said Rule."

17) Admittedly, in the instant case, no information about the sub-division of the plot was given to the Commissioner, as required under Section 388 (b) of the Act. In view of the judgment referred to above and having regard to Section 388 (b) of the Act, the argument of the learned counsel for respondent No.7 that Section 388 of the Act applies only while granting approval for the layouts and not to sub-division of an approved plot, cannot be accepted. If the argument of the learned counsel for the respondent No.7, that there is nothing wrong in sub-dividing the plot by the owner herself is to be accepted, it would definitely lead to large scale violation of building rules and giving no privacy to the neighbouring house owners. To avoid such a situation, Section 388 of the Act contemplates issuance of a notice informing the sub-division of the plot, to the Commissioner, who intturn shall cause enquiries before accepting or rejecting the said request.

18) In the instant case, as stated earlier, neither any intimation was given to the Commissioner nor any application was made to the Commissioner. It appears that without verifying the ground position and apparently in collusion, the official respondents blindly granted permission and allowed the petitioners to raise two independent multi-level buildings. It may be true that construction in both plots (single plot) was taken up and the building in both the sites is almost complete and it may also be true that some of the flats are sold, but the petitioner cannot be found fault for coming to the Court at a belated stage. He gave representations dated 21.01.2013, 01.03.2013 and 02.03.2013 bring to the notice of the authorities about the violations made but there was no action from their side. Their inaction, inspite of repeated requests, made the petitioner to file this writ petition.

19) Having regard to the aforementioned reasons, the writ petition is disposed of holding that the building permission granted vide proceedings B.A.No.667/ 2011/ G2 dated 30.03.2012, in favour of respondent Nos.4 and 5 and B.A.No.669/ 2011/ G dated 30.03.2012 in favour of respondent Nos.4 and 6 in respect of houses bearing Door Nos.6-1-51/ 2 and 6-1-51/ 2A, situated in T.S.No.849 (P), Block No.23, Ward No.1, Jawahar Street, Suryaraopeta, Kakinada, East Godavari

District is improper and incorrect. But, having regard to the averments made in the counter filed by respondent No.7 that even if there is any irregularity, such an irregularity can be rectified by resorting to appropriate remedies as provided under law, the respondent Nos.4 to 7 are at liberty to avail the remedy, if any, available under the law. To enable the respondent Nos.4 to 7 to avail remedy, if any, available under law, the respondent Nos.1 to 3 shall not take any coercive steps in respect of the said building for a period of six (06) weeks.

20) In view of the above findings, W.P.No.8376 of 2015 which is filed to declare the action of the Commissioner in not considering the application of the petitioner (respondent No.4 in W.P.No.24081 of 2013) for issuance of occupancy certificate stands dismissed.

21) Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

16.06.2017
gkv