

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.2503 of 2016

ORDER:

This Contempt Case has been filed alleging willful disobedience with the order dt.16.09.2016 in W.P.M.P.No.37644 of 2016 in W.P.No.30420 of 2016.

2. The petitioner as well as the 4th respondent are occupants of an apartment complex by name 'Mega Residency' located at House No.5-8-505/A/4, Chirag Ali Lane, Hyderabad. The complex consists of cellar, ground plus three upper floors and a pent house on the 4th floor.

3. The petitioner has two flats in the second floor of the said complex. The 4th respondent owns Flats Bearing Nos.G1, G2, 101 and 005 out of the total six flats in the complex. Flat No. 005 is on the 3rd floor in the complex. The parents of 4th respondent are residing in the Pent House in the 4th floor of the Complex.

4. The 1st respondent in the Contempt case is the Commissioner of the Greater Hyderabad Municipal Corporation (for short 'GHMC'), the 2nd respondent is the Deputy Commissioner of GHMC for Circle 8 and the 3rd respondent is the Asst. City Planner of the GHMC for same Circle.

THE W.P.No.30420 of 2016

5. The petitioner filed on 07.09.2016 W.P.No.30420 of 2016 against the respondents to declare the inaction of respondents 1 to 3 herein in stopping the 4th respondent from going ahead with the unauthorised and illegal construction of a lift in the common open area in the ground floor to the pent house in the terrace.

THE INTERIM ORDER DT.16.9.2016 IN W.P.M.P.No.37644 of 2016

6. He filed W.P.M.P.No.37644 of 2016 to direct the respondents 1 to 3 to consider representations made by him and also to stop the on going unauthorised illegal construction for erection of lift pending disposal of the Writ Petition.

7. On 16.09.2016, the Court heard counsel for the petitioner and Sri N.Ashok Kumar, Standing Counsel for the Greater Hyderabad Municipal Corporation, representing respondents 1 to 3, and directed that pending further orders, the construction for lift allegedly being made by the 4th respondent be stopped by officials of the said Corporation for a period of four weeks since the petitioner contended that no permission was granted by the said Corporation for the said construction.

8. This order was subsequently extended initially for two weeks on 21.10.2016 and later until further orders on 23.11.2016. It is thus subsisting as on date.

THE CC.No.2053 OF 2016

9. On 21.10.2016, the petitioner filed the above contempt case alleging that the above interim order has been violated by the 4th respondent, but respondents 1 to 3 did not take any action or any steps to demolish the lift illegally and unauthorisedly put up in the common area open space by the 4th respondent in spite of legal notice dt.28.09.2016 issued by the counsel for the petitioner. According to him, the 4th respondent almost completed the lift construction because of which the petitioner is unable to stay in his apartment since the lift is erected adjacent to the bed rooms of the petitioner and total ventilation for the same is closed.

10. It is not in dispute that the reply notice was got issued by the 4th respondent on 14.10.2016 denying any violation of the Court order and taking a plea that the construction of the lift was made long prior to the filing of the writ petition.

LETTER DT.3.10.2016 OF 3RD RESPONDENT AND LETTER DT.18.10.2016 OF 2ND RESPONDENT TO POLICE

11. The 3rd respondent issued a letter dt.03.10.2016 to the Deputy Commissioner of Police, Central Zone, Hyderabad and two other officials of the Police Department stating that they should take necessary steps by way of keeping vigilant watch over *the construction of the lift work* during night hours at the subject premises and see that no such construction takes place during night hours. The 2nd respondent also addressed a letter dt 18.10.2016 to the said police

officials stating that the 4th respondent *is making unauthorised construction of lift* in the said property and that he was *making construction* during night hours violating the orders of the Court and the police officials should ensure that no such construction takes place.

**COUNTER AFFIDAVIT/ ADDL. COUNTER AFFIDAVIT OF
RESPONDENT NO.S 1-3**

12. Respondent Nos. 1 to 3 filed a counter affidavit stating that on 18.08.2016 they rejected the 4th respondent's application dt.27.07.2016 for installation of lift; that he should stop the same and should apply for permission in *on line* process under Section 428 and 433 of the Act ; that they issued notice dt.27.08.2016 under Section 452(1) and 461(1) of the Act stating that the 4th respondent was illegally and unauthorisedly proceeding with the erection of the lift and should stop construction immediately and to show cause why it should not be removed, altered or pulled down; and that they also issued a notice dt.19.09.2016 to the 4th respondent *to stop the on going unauthorised and illegal construction work for lift* in view of the interim order dt.16.09.2016 granted by this Court. They also stated that they replied with legal notice dt.28.09.2016 issued by the petitioner's counsel stating that on receipt of the Court order the GHMC officials visited the site and noted that the 4th respondent had already erected the lift and they conducted a panchanama on 19.09.2016 and directed the 4th respondent not to proceed with any

type of construction work. It is also stated therein that the 4th respondent had filed O.S.No.2072 of 2016 before the IV Junior Civil Judge, City Civil Court, Hyderabad and obtained temporary injunction orders on 30.08.2016 in I.A.No.329 of 2016 by misrepresenting facts and erected the lift taking advantage of the Court order and steps were being taken to get the said order vacated. They denied that there is any inaction, gross negligence or willful disobedience of this Court's interim order dt.16.09.2016 in W.P.M.P.No.37644 of 2016 in W.P.No.3420 of 2016.

13. An additional counter affidavit was filed by respondents 1 to 3 reiterating that when officials of the Corporation inspected the site on 19.09.2016, the 4th respondent had already erected the lift in full shape, that they conducted panchanama and issued a letter dt.19.09.2016 on the same day to the 4th respondent intimating about the order passed by this Court. They stated that the petitioner gave an *oral* complaint to them that the 4th respondent was trying to make construction of lift room and also attending some covering work at night time and so they addressed the police on 18.10.2016 to take steps to stop construction in the night. For the first time it is alleged that the petitioner illegally converted a balcony in to his extended bed room and opened a window towards the lift. It is stated that the police did not find any fresh construction work or report any fresh construction of lift work at the site and the Corporation would take action as per the result in the civil suit. They offered unconditional

apology if it is found that there is any violation of the order of the Court by them.

**THE COUNTER OF RESPONDENT NO.4/REJOINDER TO COUNTER
OF RESPONDENT NO.S 1 TO 3**

14. The 4th respondent filed a counter affidavit claiming that his parents are aged above 80 years, that they are suffering from various ailments and they are unable to get down the stairs from the 4th floor where they are living in the pent house and in order to provide them facility to get down and to visit hospitals, etc., it was necessary that the lift be installed in the building by making necessary construction. It was stated that this will benefit all the residents without any exception and was free of cost for them. It is alleged that all the residents of the building including the petitioner consented to the 4th respondent erecting the lift and thereupon he applied on 27.05.2016 seeking permission for erection of lift; that since he did not receive any response from the GHMC, he proceeded with the erection of the lift after giving notice on 01.07.2016 to the GHMC informing that he is proceeding to install the lift under Section 440 of the Act; that necessary civil work and the installation of the lift was completed even before the Writ petition was filed; and that the allegation of the petitioner that the lift erected goes through the petitioner's bed room is false. He contended that none of the residents of the building objected to the construction of the lift. He stated that he had proceeded with the erection of the lift by virtue of deemed

permission under Section 437 of the Act and that he spent Rs.11 lakhs for installation of lift.

15. The 4th respondent also filed a rejoinder to the counter affidavit of respondents 1 to 3 stating that he engaged M/s NAS and Associates, Architects and Engineers after giving notice under Section 440 of the Act to the GHMC on 01.07.2016 and that the installation of the lift did not involve any civil construction and it was done on four metal poles (guide rails) which are embedded in the earth by using cement concrete and that the lift capsule would be installed between those four poles without any walls. According to him, there will be an enclosure made of aluminium coated decolum, that the lift accommodates only two persons and the entire installation of such lift takes only 15 days. He contended that necessary material was purchased from M/s Omex Elevators in first week of July, 2016 and the installation was completed by first week of August, 2016. He denied that he represented on 27.07.2016 for permission for installation of the lift to the GHMC and stated that representation was made on 27.05.2016 itself. He denied receipt of letter dt.18.08.2016 or show cause notice under Section 452 of the Act dt.27.08.2016 from GHMC. He stated that the said notice was addressed not to him, but to the owners/occupiers of the premises 5-8-505/A, Chirag Ali Lane, Hyderabad. He stated that he filed O.S.No.2072 of 2016 in the Civil Court and obtained temporary injunction orders. He thus denied violation of the orders passed by this Court and also tendered

unconditional apology if the Court finds that he committed contempt. He filed copies of documents relating to purchase of material from M/s Omex Elevators along with this counter affidavit.

THE POINT FOR CONSIDERATION

16. In view of the above pleadings, the point which arises for consideration is:

“Whether respondents 1 to 4 have willfully violated the order dt. 16.09.2016 in W.P.M.P.No37644 of 2016 in W.P.No.30420 of 2016 ?”

THE CONSIDERATION BY THE COURT

17. Before going into the above point, I may mention that on 30.03.2017, I directed the 4th Junior Civil Judge, City Civil Court, Hyderabad to furnish the record in O.S.No.2072 of 2016 on his file.

THE CONDUCT OF THE GHMC IN O.S.No.2072 OF 2016

18. The suit O.S.No.2072 of 2016 was filed on 24.08.2016 by the 4th respondent against the GHMC for perpetual injunction restraining its officials from interfering with the construction work or demolishing any part of the suit property either in whole or in part. The property described in the plaint is *“all that structures along with the lift in and over the house property in premises bearing Municipal No.5-8-505/A, admeasuring 231.82 sq. yards (plaintiff’s undivided share is 127.64 sq. yards) situated at Chirag Ali Lane, Abids, Hyderabad.*

19. The petitioner also filed I.A.No.329 of 2016 for temporary injunction pending suit restraining the GHMC from interfering in any manner or demolishing any part of the above property.

20. Urgent notice was issued by the IV Junior Civil Judge, City Civil Court, Hyderabad to the defendant/GHMC and the matter was posted to 26.08.2016. On that day the counsel for the GHMC requested time for counter and so the matter was posted to 29.08.2016. No counter affidavit was filed by the Corporation on 29.08.2016 nor was any representation made. So on 30.08.2016, temporary injunction pending suit was granted on the ground that no counter affidavit was filed and no arguments were submitted by the GHMC. Thus no serious attempt was made by the GHMC to defend itself in the I.A even though time was granted by the Civil Court to file counter affidavit before the temporary injunction was granted.

21. I.A.SR.No.1497 of 2016 was filed on 16.09.2016 by the GHMC to receive the counter in I.A.No.329 of 2016 by reopening the said I.A. and by setting aside the order dt.30.08.2016 passed in I.A.No.329 of 2016. It was initially returned on the same day on the ground that there were no 'forfeit' orders, but was resubmitted on 28.11.2016 (two and half months later) and a request was made to call the matter on bench on the next hearing date by counsel for GHMC. The counsel for respondent no.s 1-3 could not explain why two and

half months time was taken to resubmit the said application in the trial court by the Counsel for the GHMC there.

22. It was then called on 10.02.2017 (three and half months after its resubmission). Why Counsel for GHMC in the suit did not bother to get the said I.A heard for three and half months is not explained by Counsel for respondent Nos.1 to 3 herein.

23. On 10.02.2017, on the ground that no arguments were addressed by counsel for GHMC, I.A.SR.No.1497 of 2016 was rejected. Why the Counsel for the GHMC in the suit did not make any attempt to argue the said petition at all after filing it is also not explained by counsel for respondent Nos.1 to 3 herein.

24. No Civil Revision Petition was filed in this Court by the GHMC assailing the action of the Civil Court in rejecting I.A.SR.No.1497/2016.

25. Reference to the above proceedings is necessitated to show how the deliberate inaction/negligence of the GHMC in the proceedings in the suit at every stage benefited the 4th respondent and facilitated his project of erection of the lift in the premises.

**WHETHER THE RESPONDENT NO.4 COULD HAVE INVOKED THE
DEEMED PERMISSION PROVISION IN SEC.437 OF THE ACT**

26. It is undisputed that the lift erected by the 4th respondent is in an apartment complex in which there are several co-owners of the land other than the 4th respondent. It was thus not the exclusive

property of the 4th respondent, but he was only a co-owner like the petitioner and other occupants. The lift was undoubtedly erected in the common area in the complex.

27. Though the 4th respondent contended that all the residents including the petitioner accepted for construction of lift by him, he has not filed a single consent letter of any of the residents in support of this plea.

28. It may be true that the 4th respondent applied to the GHMC on 27.05.2016 for permission for erection of lift in the premises. But admittedly permission is required to be applied online along with payment of requisite fee. No fee was offered to be paid by the 4th respondent to the GHMC. Without applying for permission online with requisite fee, the 4th respondent could not have expected to get any permission from GHMC.

29. On 01.07.2016, he addressed a letter to the GHMC stating that he is commencing installation of lift since he waited for one month and permission was not granted nor refusal communicated and that he is treating that there is a deemed permission granted to him to erect the lift.

30. It is settled law that an applicant can invoke the deemed permission provision in Section 437 of the Act only if the construction he proposes to make conforms to the provisions of the Act.

31. In **BOC India Ltd v. Municipal Corporation of Hyderabad**¹, this Court held that merely because there is deemed sanction as contemplated under Sec.437 of the Act, a person cannot have licence to make constructions as he pleases and whatever plans he submits should conform to the Building and Zonal regulations.

32. In **Yasseen Khatoon v. Commissioner, Municipal Corporation of Hyderabad**² also this Court held that construction under the deemed permission can be proceeded with only if it is in accordance with the building rules and regulations, but not if it is violation of the same.

33. Since the 4th respondent's erection of the lift is in the common areas in an apartment complex of which he is not the sole owner, when there is no NOC issued by the other residents to him in writing for the said purpose, and he did not even make application for permission online along with payment of fee, he cannot seek to defend his action by relying on Sec.437 of the Act. Therefore, the very construction of lift by the 4th respondent in the common areas of the apartment complex is in gross violation of the provisions of the Act and the Rules framed thereunder.

OTHER CIRCUMSTANCES

34. It is not in dispute that the petitioner had made representation on 02.08.2016 and also sent reminders subsequently

¹ 1996 (2) ALD 38

² 2005 (3) ALD 779

informing the GHMC of the attempts by the 4th respondent to erect the lift. But only on 18.08.2016, permission for erection of the lift was rejected by the GHMC and he was asked to stop the construction work of erection of lift.

35. 10 days later, on 27.08.2016 only, a notice under Section 452(1) and 461(1) of the Act was addressed by the GHMC to “*the owners/occupiers of H.No.5-8-505/A, Chirag Ali Lane*” to stop construction of the lift. It is not as though the GHMC officials were unaware of the activities of the 4th respondent in attempting to erect the lift in the apartment complex having rejected his application on 18.08.2016. Yet deliberately, the notice is issued under Section 452 (1) and 461(1) of the Act *not to the 4th respondent specifically*, but to unknown occupants of the above premises. This conduct on the part of GHMC officials also indicates that they wanted to help the 4th respondent to erect lift in the common areas by 4th respondent.

36. On 19.09.2016, the 3rd respondent wrote to the 4th respondent to stop *on going unauthorised and illegal construction for lift in the open space and pent house in the terrace* of the above premises. As pointed above, even in the letter dt.18.08.2016 addressed to the 4th respondent as well as in the letter dated 18.10.2016 addressed to the police, the 3rd respondent and the 2nd respondent respectively used the words “*immediately stop construction work of erection of lift*” and “*Mr Panjwani(4th respondent)is making unauthorised construction of lift over the property*” . This indicates

that by those dates, the erection of lift by the 4th respondent was not complete and was on going.

37. But in the counter affidavit filed by respondent no.s 1-3, it is stated by respondent Nos.1 to 3 that by 19.09.2016 itself, the 4th respondent had completed erection of lift and this was also recorded in a panchanama prepared by them.

38. The panchanama dt.19.09.2016 though not filed in the material papers was produced by the Standing Counsel for GHMC and it was signed by only one panch witness, whose residence and other particulars were not noted on the Panchanama.

39. In my considered opinion having regard to the facts noted in para 36 above, the plea in the counter affidavit of respondents about completion of erection of lift by the 4th respondent long before passing of the interim order by this Court, is a false plea.

40. In addition, the manner in which the GHMC acted in the Civil Court in O.S.No.2072 of 2016 leaves no doubt in the mind of the Court that there is clear collusion between the officials of the GHMC and the 4th respondent to facilitate the erection of the lift in the common areas of the apartment complex.

41. The term “collusion” is defined in the Concise Oxford English Dictionary, South Asia Edition (12th Edition) to mean a secret or illegal cooperation in order to cheat or deceive others.

42. The Supreme Court of India in **Gram Panchayat of Village Naulakha Vs. Ujagar Singh**³ has held that “collusion” in litigation is essentially play acting by two or more persons for one common purpose, and that it is an unreal and fictitious pretence of a contest by confederates whose game is the same. It held that a party can, in a collateral proceedings show that a decree or order obtained by the opposite party against him was passed by a Court without jurisdiction or was obtained by fraud or *collusion* and *it is not necessary to bring an independent suit for setting it aside*.

THE ORDER DT.30-08-2016 IN I.A.No.329 of 2016 IS A COLLUSIVE ORDER AND IS A NULLITY

43. Having regard to the said collusion between the 4th respondent and the GHMC officials, the order of temporary injunction in I.A.No.329 of 2016 on 30-08-2016 obtained by 4th respondent in the civil court in O.S.No.2072 of 2016 being result of such collusion, would not have any legal validity, and would be a nullity in view of Section 44 of the Evidence Act, 1872.

44. Though all the respondents sought to contend that petitioner also made some constructions contrary to the Act, the constructions made by the petitioner is not the issue in the Writ Petition or in the Contempt Case and it is the conduct of the 4th respondent and Officials of GHMC which is to be taken into account.

³ (2000) 7 SCC 543

THE CONDUCT OF 4TH RESPONDENT

45. The material produced by 4th respondent along with additional counter relating to purchase of material for erection of the lift between 02.07.2016 and 24.08.2016 from M/s.Omex Elevators is also not relevant because the question is not when the 4th respondent purchased the material, but whether he constructed the lift after the interim order was granted by this Court on 16.09.2016 or prior thereto.

46. The 4th respondent in the counter-affidavit at para-4 pleaded that civil work was necessary for construction of the lift, but in the rejoinder filed by him to counter of respondent Nos.1 to 3, he pleaded that installation of lift did not involve any civil construction. Thus the 4th respondent has taken inconsistent pleas.

47. He has also taken a false plea that all the residents of the apartment complex including the petitioner had agreed for erection of the lift in the common areas in the complex.

48. It is obvious that he managed the officials of the GHMC and ensured that they did not do anything to stop him from erecting the lift in the common areas of the complex.

49. The 4th respondent clearly has no respect for the law or for Court orders and obviously believes that he can do anything and manage anybody to get what he wants even if the other residents of the apartment complex like the petitioner may suffer for his actions. If

the 4th respondent is allowed to go scot free for his actions, it would embolden several other residents of the City to act like him making life miserable for their neighbours and other residents in the City.

50. Therefore, he cannot escape from the consequences of his illegal actions and the lift constructed by him in the common areas in the apartment complex cannot be allowed to stand.

RESULT

51. For the aforesaid reasons, the Contempt Case is allowed; the 4th respondent is sentenced to pay fine of Rs.2,000/- (Rupees Two Thousand only) within six weeks from today; the respondent no.s 2 and 3 shall also pay fine of Rs.2000/-(Rupees Two Thousand only) within six weeks from today; the respondent no.s 1-3 shall remove the lift erected by the 4th respondent in the subject complex within 4 weeks from today without reference to the interim order dt.30.08.2016 in I.A.No.329 of 2016 in O.S.No.2072 of 2016 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad; the 1st respondent shall cause an enquiry into the conduct of the officials of GHMC in Circle-8 in relation to the above facts pointed out by the Court and initiate disciplinary proceedings against the persons responsible for violation of the orders passed by this Court; and he shall also ensure that in the City Civil Court at Hyderabad or Secunderabad or Ranga Reddy, competent Counsel are engaged by the GHMC who would defend it properly in litigation initiated against it or by it.

52. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-04-2017
Kvrm

