

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.35703 of 2017

ORDER: (Per Hon' ble Sri Justice C.Praveen Kumar)

1) The present Writ Petition came to be filed under Article 226 of the Constitution of India, seeking issuance of a writ of Certiorari, calling for records relating to and connected with the order dated 21.10.2017 passed by the first respondent in a complaint No.3184/ 2017/ B2 and quash the same.

2) The circumstances which lead to filing of the present writ petition are as under:

The petitioner herein claims to have purchased two vacant plots bearing Nos.155 and 156 in Sy.No.32, admeasuring 480 square yards, from one Smt. Pani Motilal Jain, through a registered sale deed bearing document No.20257, dated 19.12.2005, after paying valid sale consideration. The petitioner herein claims to have been in possession and enjoyment over the said property and also got the said plots regularized under the Urban Land Ceiling (Ceiling and Regularization) Act, 1976, vide G.O.Ms.No.151, dated 12.02.2007. While things stood thus, the second respondent herein filed O.S.No.868 of 2015 on the file of the XV Additional District Judge, Ranga Reddy District, seeking permanent injunction against the petitioner. It is said that as the second respondent made some

un-authorised constructions, the petitioner lodged a complaint with the third respondent. Acting upon the said complaint, the G.H.M.C. officials after following due process of law, issued a notice dated 13.10.2015 under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short "the Act") to the second respondent. Hence, W.P.No.34808 of 2015 came to be filed by the second respondent before this Court, questioning the issuance of the said notice as violative of principles of natural justice. By an order, dated 19.10.2015, the Hon'ble High Court directed the official respondents therein, not to take any coercive steps and posted the matter to 28.10.2015 for further hearing. The said writ petition was disposed of on 23.06.2017, directing the official respondents therein to follow due process of law before taking any coercive steps. In the said writ petition, the petitioner herein was arrayed as third respondent. After the dismissal of the said writ petition, the petitioner made an application dated 07.07.2017, before the third respondent, for removal of un-authorised conditions. A show-cause notice came to be issued on 05.08.2017 to the second respondent under Sections 452 (1) and 461 (1) of the Act, to show cause as to why the un-authorised constructions made therein should not be removed or pull down. Since no reply was given to the said show-cause notice, a notice under Section 452 (2) of the Act came to be issued for further action. As there was no response, the third respondent issued a notice dated 17.10.2017 under Section 636 of the Act, calling upon the occupier to remove the un-authorised construction of rooms and shed in the subject

land within 24 hours. On 20.10.2017, the officials of the third respondent are said to have gone to the subject site, but however, on an assurance alleged to have been given by the second respondent, the officials of the third respondent left the premises. It is said that when the officials of the third respondent went to the subject site again on 23.10.2017, the impugned order passed by the first respondent was shown by the second respondent, which lead to filing of the present writ petition.

3) No counter is filed inspite of matter being adjourned for the said purpose.

4) Sri V.R.N.Prasanth, learned counsel for the petitioner would submit that the order passed by the first respondent is without jurisdiction and the same is in-contravention of the judgment of the Full Bench of this Court in Dr.R.G.Sunil Reddy v. A.P.Lokayuktha, Hyderabad and others¹. According to him, the power vested to the Hon'ble Lokayukta is only limited to the extent of submitting report to the competent authority for examining the same and take appropriate action basing on the said recommendation. According to him, the Hon'ble Lokayukta has no jurisdiction to direct the authorities not to demolish the constructed house and sheds in the subject property.

5) As stated earlier, no counter is filed by the second respondent, but however, Sri B.V.Subbaiah, learned Senior Counsel appearing for the second respondent, basing on the material

¹ 2015(6) ALD 302 (FB)

available on record, would contend that the writ petitioner has no locus to file the writ petition as he is not aggrieved by the order of the Hon'ble Lokayukta. According to him, the petitioner herein is not even a party to the said proceedings, as such the Court cannot entertain the writ petition. He further submits that the second respondent herein purchased 264 square yards in the year 2011; demolished a portion of existing structure and constructed two small rooms in that place. Hence, the allegation of the petitioner that the second respondent is making illegal constructions is incorrect, as no permission is necessary for raising structures after demolishing the old structures. Since the third respondent issued a notice under Section 636 of the Act, the second respondent filed W.P.No.34808 of 2015, which was disposed of on 23.06.2017, directing the authorities to follow due process of law. He also submits that earlier, the second respondent filed O.S.No.868 of 2015 seeking injunction restraining the writ petitioner from disturbing with his possession. It is stated that the petitioner also filed a written statement in the said suit. In view of the fact that the matter is purely civil in nature, the request of the petitioner cannot be accepted. He further submits that since the petitioner is only seeking quashing of the interim order and not the original complaint, he cannot ask for any interim order in the present writ petition or even ask for setting aside the interim order. He also submits that in view of the dispute between the parties, the petitioner cannot as a matter of right claim any title or right over the property. Therefore, the order of Hon'ble Lokayukta

restraining the official respondent from interfering with the possession of the second respondent cannot be found fault with. It is his plea that the officials of the third respondent are acting in biased manner, since the petitioner is M.L.A. of Andhra region and the action of the authorities is illegal and improper. According to him, the Hon'ble Lokayukta has got every right to interfere and to protect the interest of the second respondent. It is his plea that once the complaint is entertained, the Hon'ble Lokayukta has got every right to pass an interim order.

6) Sri Sampath Prabhakar Reddy, learned Standing Counsel for G.H.M.C. would submit that under the meaning of word "building" as defined under the Act, permission is necessary even for any alteration to the building. According to him, the argument of the Senior Counsel that no building permission is necessary for making constructions, after demolishing the existing structure, cannot be accepted. Basing on the record, he states that the subject structure is partly demolished.

7) In reply to the said argument, learned counsel for the petitioner relied upon the judgment of this Court in *Rajkumar Bharatlal v. Government of Andhra Pradesh, rep. by its Principal Secretary, Revenue (Endowments-I) and others*² to show that Hon'ble Lokayuktha has no power to issue any mandate, interim or final, to the competent authority in respect of complaint received, except making recommendations. Having regard to the above, he pleads that the first respondent can only

² (2014) 4 ALT 645 (DB)

entertain a complaint making recommendation for appropriate action to the officials but definitely cannot give any such positive directions. Hence, he pleads that the order under challenge is liable to be *set aside*.

8) The question that arises for consideration is “whether the interim order passed by the first respondent can be questioned by a person, who is not a party to the proceedings. In other words, whether the writ petitioner has *locus standi* to question the interim order passed by the Hon’ble Lokayuktha.

9) As seen from the record, there exist some disputes between the petitioner and the second respondent herein with regard to a property situated in Plot No.155 in Sy.No.32 of Guttala Begumpet Village, Sherilingampally Mandal. The second respondent herein filed O.S.No.868 of 2015 before the XV Additional District Judge, Panga Reddy, seeking permanent injunction against the writ petitioner. Further, he also filed W.P.No.34808 of 2015 before this Court, questioning the notice issued by the third respondent herein under Section 636 of the Act. In O.S.No.868 of 2015, the writ petitioner was shown as a party and he has also filed written statement in the said suit, disputing the claim made by the second respondent with regard to the property. In the written statement there was a reference to the notice issued under Section 636 of the Act, filing of the writ petition ie. W.P.No.34808 of 2015, the interim order of Lokayuktha directing G.H.M.C. not to take any coercive steps.

10) From the material placed on record, it appears that the second respondent herein was unsuccessful in getting any interim order in the suit and the interim order which was made in the writ petition got merged with the final order dated 23.06.2017, wherein the High Court directed the official respondent therein to follow due process of law before taking any coercive steps. Being unsuccessful in getting any positive direction, the second respondent herein filed a complaint before the first respondent on 21.10.2017, without making the writ petitioner as a party, questioning the action of the third respondent in trying to demolish the temporary structures and issuance of notice, in collusion with third party, who has nothing to do with the subject property.

11) The learned Senior Counsel appearing for the second respondent would contend that as the petitioner has nothing to do with the action of the authorities in issuing notice under Section 636 of Act, he was not made a party in the complaint. According to him, the dispute is between the third respondent and second respondent herein and that the petitioner has nothing to do with the same. But at the same time, it is to be noted that in W.P.No.34808 of 2015, which was filed before this Court, questioning the issuance of notice by the G.H.M.C., against the second respondent the writ petitioner herein was shown as third respondent in the said writ petition, though the dispute alleged was between the second respondent herein and the G.H.M.C. In the suit filed by the second respondent, the petitioner was shown as party and he has also filed written statement disputing the

claim made therein. That being the position, in all fairness, the complainant/ second respondent ought to have made the petitioner as party to the proceedings. Since he was not made a party and as the impugned order came to be passed without hearing the writ petitioner, there is every justification for him to approach this Court under Article 226 of the Constitution of India, as there exists a dispute between the petitioner and the second respondent in two other forums where the second respondent was unsuccessful in getting any orders. Hence, we feel that the petitioner has locus to question the impugned order.

12) The next question that arises for consideration is whether filing of the suit and the issuance of a notice under Section 636 of the Act has nothing to do with the order passed by the Hon'ble Lokayukta since the action of the third respondent authorities is questioned on the ground that the notices are repeatedly issued in collusion with the writ petitioner, who is a M.L.A.

13) At first blush the said argument appeared to be impressive but a close perusal of the complaint proved otherwise. A reading of the affidavit filed in support of the complaint does not anywhere indicate the status of the writ petitioner. On the other hand, the last paragraph of the affidavit only states that the respondents have no right to demolish the temporary structures and the notices are issued in collusion with the third party, who has nothing to do with the subject property. The averments in the complaint, does not anywhere indicate that notice under Section 636 of the Act

came to be issued in collusion with the petitioner, who is a M.L.A. At the same time, it is also to be noted that the version in the complaint is that the notice came to be issued in collusion with the third party, who has nothing to do with the said property.

14) It is to be noted that when a notice under Section 636 of the Act came to be issued, a writ petition was filed before this Court questioning the issuance of the said notice as violative of principles of natural justice. The said request was accepted by this Court and the writ petition was disposed of directing the authorities to follow due process of law before taking any coercive steps against the second respondent. That being the position and when the second respondent has already approached this Court expressing his grievance, he could have as well approached the appropriate forum ventilating his grievance instead of filing a complaint before the first respondent, narrating the very same factual position. When the same is pointed out, Sri B.V.Subbaiah, learned Senior Counsel appearing for the second respondent would contend that filing of the suit and filing of the earlier writ petition has nothing to do with the complaint which is made before the first respondent.

15) But here is a case whether the petitioner is fighting for his right over the property and he was made a party not only in the civil suit which was initiated by the second respondent and also in the writ petition filed against issuance of a notice under Section 636 of the Act in respect of the very same property. Therefore,

prima facie, it cannot be said that the complainant is only questioning the action of the officials. Hence, the argument of the learned Senior Counsel that filing of the suit and earlier writ petition has nothing to do with the complaint *prima facie* may not be correct. Even assuming that the complainant is questioning the action of the officials in passing orders in collusion with the writ petitioner, the issue is whether the Hon'ble Lokayukta could have passed an interim order, restraining the officials from taking steps in accordance with law.

16) The jurisdiction and power of Hon'ble Lokayukta in passing either interim order or final order came up for consideration before a Division Bench of this Court in Rajkumar Bharatlal case (2 supra). In the said case, Division Bench of this Court held that Hon'ble Lokayukta has no power to issue any mandate, interim or final, to the competent authority in respect of a complaint received except making a recommendation. After referring to Section 7 of the Andhra Pradesh Lokayukta Act, 1983, the Court held as under:

“It is clear that the Hon'ble Lokayukta has been invested with the power of investigation, and while doing so, as required under Section 12 of the Act, a report has to be prepared, by recording findings and recommendations, and be communicated to the competent authority. Thus, it is manifest that Hon'ble Lokayukta has no power to issue any mandate either interim or final. We therefore accept the contention raised by the learned counsel for the petitioner that the Hon'ble Lokayukta is not empowered to do what has been done by it.”

17) Similarly, a larger Bench of this Court in Dr.R.G.Sunil Reddy case (1 supra) after considering the provisions of law extracted the following questions for consideration:

a. Whether A.P.Lokayuktha has jurisdiction to entertain a complaint, which does not involve an allegation, or a complaint regarding non-implementation of an order of a Magistrate in a matrimonial dispute between a wife and husband, or any other dispute inter se private individuals, and pass consequential orders? b. Whether the A.P. Lokayukta can issue directions or pass an order directly against the persons mentioned in clauses (i) to (iv) of Section 7(1) of the Act ?

c. Whether A.P. Lokayukta can take action *suo motu* under the Act?

After considering all the provisions of law, the Full Bench held as under:-

“20. We, accordingly, answer question No.1 in the negative and hold that the Lokayukta has no jurisdiction to entertain a complaint, which neither involves an allegation nor involves any action or inaction connected with such an allegation. We also hold that inter se private disputes between the parties including matrimonial dispute does not fall within the purview of the jurisdiction of the Lokayukta under the Act and that only such acts, which are actuated by allegation against public servants and the authorities as named under Section 7 of the Act alone fall within the domain of the Lokayukta or Upa-Lokayukta, as the case may be. The discussion, as above, also answers question No.2 in the negative Question No.3, however, does not arise on the facts and circumstances of the case and would amount to adjudication on hypothetical question. Hence, the said question is left open.”

18) A reading of the two judgments referred to above and the provisions of the Andhra Pradesh Lokayukta Act, makes it clear that Hon'ble Lokayukta can only recommend to the authorities after calling for a report, but definitely cannot give any positive direction to the authorities.

19) Having regard to the decisions referred to above and in view of the pendency of the litigation between the parties before the Civil Court, with regard to very same subject matter and as the third respondent is ceased of the matter, we are of the opinion that the interim order passed by the first respondent giving positive directions to the third respondent is in correct. Hence, the order under challenge is set aside leaving it open to the second respondent to avail the alternative remedy, if any, available under law.

20) Accordingly, the writ petition is allowed, setting aside the interim order dated 21.10.2017 passed by the first respondent in complaint No.3184/ 2017/ B2.

21) There shall be no order as to costs. Miscellaneous Petitions, pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

N. BALAYOGI, J

29.12.2017
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