

THE HON'BLE SRI JUSTICE P NAVEEN RAO

CIVIL REVISION PETITION NO.1124 OF 2018

DATE: 25.09.2018

Between :

The Property Association of Baptist Churches (P) Ltd.,
Kavali, Nellore district, per its General Council Member
And Property Custodian, R.Johnson.

..... Petitioner/
Proposed defendant no.2

And

Warangal Municipal Corporation, Warangal,
Rep.by its Commissioner, and another.

.... Respondents



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ORDER:

Heard learned counsel for petitioner Sri J Venkateswara Reddy and learned counsel for second respondent Sri Subba Rao Korrapati. Petitioner herein is proposed defendant and second respondent is plaintiff.

2. O.S. No.115 of 2010 was filed praying to grant decree of perpetual injunction against defendant-Warangal Municipal Corporation from interfering with construction work of the School building. Petitioner filed I.A.No.455 of 2010 to implead as defendant no.2. The said application was dismissed by the Trial Court vide order dated 05.01.2018. On due consideration of the respective submissions, the trial Court observed that petitioner authorised the plaintiff to use the property for specific purpose and if the plaintiff violates any of its conditions, he could have initiated appropriate proceedings but cannot be permitted to be impleaded as defendant in the proceedings initiated by the plaintiff against third party. Trial Court observed that if the proposed party is impleaded it would widen the scope of the present proceedings and that petitioner is neither necessary nor a proper party in the suit and in his absence also main issue can be resolved.

3.1 Learned counsel for petitioner would submit that the only reason for instituting the suit praying to grant injunction against Municipal Corporation is that the Corporation was trying to interfere in the construction activity being undertaken by the

plaintiff. Plaintiff alleges that though all required formalities were complied, the building permission was not granted on the complaint filed by Mr. Johnson and his brother to the Tahsildar and Municipal Corporation. Plaintiff also alleges, due to external pressure, the building permission was not granted, and Municipal Corporation is obstructing construction undertaken by him.

3.2. By drawing attention to pleadings in the plaint, learned counsel for petitioner would submit that plaintiff admits that suit schedule property was allotted to him by the petitioner in the year 1998 for running the school and on the complaint filed on behalf of petitioner, building permission applied by plaintiff was not granted.

3.3. According to learned counsel, apprehending that in spite of making several representations, Municipal Corporation was going ahead to process the building application, petitioner earlier filed W.P.No.12079 of 2010 wherein petitioner herein and Mr R. Johnson were petitioners and plaintiff is 3rd respondent. This Court by order dated 13.6.2012 directed respondent Municipal Corporation and City Planner, Warangal Municipal Corporation to consider the representations submitted by petitioner dated 31.08.2009, 16.10.2009, 19.11.2009, 20.11.2009 and 18.12.2009 and to pass orders. He would therefore submit that the history of litigation clearly points out that plaintiff want to undertake the construction of building in spite of objections filed by petitioner by obtaining decree behind his back and in such an event grave and irreparable injury would be caused to him.

3.4. According to learned counsel for petitioner, plaintiff as well as sole defendant in the suit colluded, that defendant was set ex-parte and therefore there is no one to contest the suit. Under the guise of ex-parte decree, if the plaintiff undertakes construction, grave prejudice would be caused to petitioner. As suit schedule property belongs to petitioner, as owner of the property, petitioner is necessary and proper party and petitioner should be heard before granting decree as prayed for by the plaintiff.

4. According to learned counsel for plaintiff-second respondent, plaintiff was running school for the last more than 50 years and petitioner allotted the suit premises to the plaintiff in the year 1998; that over a period of time, school was upgraded and in order to improve the infrastructure, plaintiff intended to undertake construction of building. Plaintiff has applied for building permission by following the norms as required by the building rules. If permission applied is not denied within time stipulated, it is open to the applicant to undertake construction. Though, plaintiff gave notice to the municipal corporation informing that building permission is not granted and that they intend to undertake construction, no reply was given, therefore, plaintiff is entitled to undertake construction as per the building permission already applied. At that stage, as officials of municipal corporation were trying to interfere in the possession and enjoyment of the suit schedule property and undertaking construction in accordance with building permission already applied, suit was filed. According

to learned counsel, grievance of plaintiff is against the respondent municipal corporation in not granting building permission and obstructing the construction activity. Petitioner herein has no locus to implead as defendant and oppose the prayer sought by the plaintiff. If petitioner has any independent claim vis-à-vis plaintiff concerning suit schedule property, it is always open to the petitioner to avail appropriate remedy. But he cannot oppose prayer sought by the plaintiff against Municipal Corporation. Thus, he is not necessary or proper party. His presence has no value to the suit proceedings.

5. Facts as disclosed from the averments in the plaint and other material placed on record would show that even according to plaintiff, the petitioner herein allotted the suit premises to the plaintiff in the year 1998. This lends credence to the contention of the petitioner that the property belongs to petitioner and only licence was granted to the plaintiff to enjoy the property as it stood, and that plaintiff cannot resort to change physical features to the suit property. As can be seen from the plaint averments, plaintiff alleges involvement of Mr R Johnson and his brother in opposing construction of the building, filing complaints to various authorities and because of them only, the building permission was not granted. Mr Johnson claims to be the General Council Member and Property Custodian of Mission Hospital (Christian Hospital & Rural Health Centre, Hanamkonda) and claims to represent the petitioner as its General Council Member and Property Custodian. Admittedly, so far, building

permission is not granted, apparently because of the objections/complaints filed by Mr Johnson and his brother against undertaking construction. As seen from the order of this Court in W P No.12079 of 2010 wherein petitioner herein is first petitioner and Mr R Johnson is second petitioner who represents first petitioner therein, alleged that in spite of filing complaint against grant of building permission, no action was taken by the municipal corporation to reject the application and on the contrary municipal corporation was taking steps to grant building permission and in such an event, grave prejudice would be caused to petitioners therein. Taking note of said plea, this Court disposed of the writ petition, directing the municipal corporation to consider the representations submitted by petitioners therein and to pass appropriate orders in accordance with law. Plaintiff is 3rd respondent in the said writ petition. Thus, in the facts as noted above with reference to claim of petitioner and averments of plaintiff in the plaint, it cannot be said that petitioner is stranger to the litigation.

6. It cannot be said that by obtaining decree against municipal corporation, if petitioner undertakes construction of the building without a building permission, the rights of the petitioner would not be affected adversely. Be it noted that no valid building permission is granted to plaintiff. If building is constructed it would change the physical features of the property to the detriment of the owner of the property. Further, as noted above, petitioner has been vigorously pursuing against grant of building permission

and even according to plaintiff building permission is not granted because of the objections raised by the petitioner. Further, municipal corporation was set ex-parte and there is no one to contest the suit.

7. The trial Court rejected the application of the petitioner to implead as second defendant on the ground that no relief is sought by the plaintiff against the proposed defendant and that if the construction activities sought to be undertaken by the plaintiff would affect the rights of the proposed defendant, the proposed defendant can as well initiate separate proceedings but cannot be impleaded in the suit filed by the plaintiff against the municipal corporation.

8. This very issue has come up for consideration before this Court in **S.M.M. Jahangir Ali Khan Vs. Markazi Qutub Khana (Library) and Ors**¹. Facts are some what similar and the claim to implead as defendant by the owner of the property was rejected by the trial Court. Taking note of the views expressed by the Supreme Court in **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay and others**², wherein, Supreme Court held that by exercising discretion trial Court can direct plaintiff to implead a person as a necessary party if the facts and circumstances of the case so warrant, held that the petitioner therein having locus standi to be arrayed as a defendant.

¹ 2016 (3) ALD 247

² (1992)

9. In facts of this case, the Court is satisfied that revision petitioner is having locus standi and has also interest in the lis and his presence as defendant in the suit is necessary for effective adjudication of the suit. Viewed from this, order against which this revision is filed is not sustainable and is liable to be set aside and accordingly set aside. Petitioner herein be brought on record as defendant and trial Court shall proceed further in the matter. Civil Revision Petition is allowed. No costs. Miscellaneous Petition stands closed.

DATE: 25-09-2018
TVK

P NAVEEN RAO,J



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