

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.20880 OF 2017

ORDER:

The petitioner states that he is the owner of premises bearing Municipal No.23-1-1030/5, Moghalpura, Hyderabad, and adjacent to his house, the sixth respondent was raising unauthorised construction of ground and first floor in house No.23-1-1031, which is adjacent to Moghalpura Kaman, Hyderabad. The said unauthorised construction was brought to the notice of the respondents 2 to 5 on several occasions and they did not take any action. In those circumstances, he filed W.P.No.29410 of 2010 and pursuant to the direction given by this Court in the said writ petition, the fifth respondent submitted the Action Taken Report stating that after demolishing the affected portion in the road widening, the sixth respondent applied for building construction permission for construction of ground and first floor shops in house No.23-1-1031, Panch Mohalla, Moghalpura, Hyderabad. The said application was considered with reference to the Building Rules and the same was rejected vide dated 19.09.2010. Subsequently, she filed O.S.No.3979 of 2010 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad, against one S.A.Qadeer seeking perpetual injunction restraining him and anyone else coming under him from interfering with the plaintiff's possession. The Greater Hyderabad Municipal Corporation was not made a party to the said suit. In those circumstances, the second respondent issued a notice under Section 452 of the Hyderabad Municipal Corporation Act on 20.11.2010 to the sixth respondent and she submitted a detailed reply on 23.11.2010. After considering the said reply, the second respondent issued a notice under Section 636 of the Greater Hyderabad Municipal Corporation Act directing the sixth respondent to remove/pull down the unauthorised constructions. She filed O.S.No.1751

of 2011 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad, challenging the final notice, dated 07.09.2011 and filed I.A.No.351 of 2011 seeking interim injunction and the learned Junior Civil Judge was pleased to order maintenance of *status quo* as on 16.12.2011. When the said suits were pending, W.P.No.29410 of 2010 filed by the petitioner came up for hearing and the said writ petition was allowed on 21.12.2011 directing the respondents 2 to 4 therein to act on the final order, dated 07.06.2011, and remove the construction made by the sixth respondent in the premises bearing No.23-1-1031. Challenging the said order, dated 21.12.2011, she preferred Writ Appeal No.70 of 2012 before the Division Bench of this Court and the Division Bench disposed of the Writ Appeal on 18.07.2012 without interfering with the order passed by the learned single Judge, but directing the civil court to dispose of the matter in accordance with law. In view of the same, the demolition was postponed. Thereafter, the petitioner was impleaded as a necessary party in O.S.No.1751 of 2011. The said suit was dismissed for default on 27.09.2016. It appears that after filing the present writ petition, the sixth respondent filed an application seeking restoration of the suit in O.S.No.1751 of 2011 on 27.09.2016 and the application was allowed. After allowing the said application, the suit was taken up for consideration and it was dismissed on 28.03.2018.

At this stage, learned counsel for the respondents submits that against the dismissal of the said suit, the sixth respondent filed A.S.No.98 of 2018 and in I.A.No.521 of 2018, the learned XI Additional Chief Judge, City Civil Court, Hyderabad, passed an order of *status quo* till disposal of the Appeal. The second respondent herein and the petitioner herein are parties to the said Appeal.

Now it is clear from the above facts that the sixth respondent has been involving the authorities in multiple litigations and though an order

was passed by the second respondent under Section 636 of the Greater Hyderabad Municipal Corporation Act on 07.09.2011, the order could not be implemented in view of the Writ Appeal preferred by the sixth respondent and the suit in O.S.No.1751 of 2011 filed by the sixth respondent herein.

This Court wayback on 21.12.2011 allowed the W.P.No.29410 of 2010 filed by the petitioner herein by directing the respondents 2 to 4 therein to act as per the notice issued under Section 636 of the Greater Hyderabad Municipal Corporation Act on 07.09.2011 and remove the constructions made by the sixth respondent. When an Appeal was filed against the said order, the Division Bench of this Court did not incline to interfere with the order passed by the learned single Judge. Now the suit itself was dismissed by the trial Court, against which, A.S.No.98 of 2018 is filed. There cannot be any interim order contrary to the orders passed by this Court. If at all, an interim order of *status quo* was passed by the lower appellate Court, it would enure to the benefit of the sixth respondent to the extent of permission obtained by the sixth respondent from the second respondent. If the sixth respondent does not have any permission, it is open to the second respondent to take action in accordance with law pursuant to the notice already issued under Section 636 of the Greater Hyderabad Municipal Corporation Act, on 07.09.2011, and as per the order of this Court in W.P.No.29410 of 2010, dated 21.12.2011.

In view of the same, the writ petition is allowed directing the respondents 2 to 5 to take further action in accordance with law within a period of two months from the date of receipt of a copy of this order. It is made clear that the order of *status quo* passed by the lower appellate Court shall enure to the benefit of the sixth respondent to the extent of the permission, if any, granted by the second respondent and not beyond that.

The writ petition is accordingly allowed. Consequently, miscellaneous petitions, if any pending, in the writ petition shall stand closed.

A.RAMALINGESWARA RAO, J

30.04.2018
pln

