

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.22185 of 2008

O R D E R:

In this writ petition, petitioner challenges notice, dated 29.09.2008, and consequential notice, dated 03.10.2008, issued by respondent No.1-Commissioner of Khammam Municipality, invoking Section 288 of the Andhra Pradesh Municipalities Act (for short 'the Act') directing her to demolish Venkata Lakshmi Talkies(old) situated at Burada Raghavapuram Street, Khammam.

The petitioner states that she has a share of 60% in the above said Talkies, which was originally owned by his father, by name, Sri A.Venkatadri, and that she filed an application on 24.09.2008 before respondent No.1 seeking permission for undertaking repair works in the said Talkies. She further states that initially, the Talkies was leased out to the third parties and since 1983, the same was not in operation on account of certain disputes among the partners, who had taken the same on lease. She further states that her father died in 1980 and from 1994, she is taking care of the Talkies. She also states that the impugned notices were issued on the basis of the complaint given by respondent No.3, who is none other than her sister.

Respondent No.1 filed a counter-affidavit stating that on the complaint given by respondent No.3, the answering respondent directed respondent No.2-Building Inspector, Khammam

Municipality, to inspect the subject premises and file his report. Accordingly, respondent No.2 inspected the premises and found that certain repairs were carried out and the petitioner has not produced any permission therefor as required under the provisions of the Act. In the circumstances, the answering respondent issued a notice to the petitioner under Section 228 (2) of the Act directing her to remove the unauthorized constructions made by her. As there was no reply from the petitioner, the answering respondent got issued a Memo on 30.09.2009 to respondent No.2 to take immediate action as per the Rules and submit a report to that effect. While so, the petitioner submitted an application before the answering respondent stating that there is no building activity undertaken and only repair work is being undertaken in the subject premises. Thereafter, on 06.11.2008, the answering respondent directed her to produce necessary documents to process the application, but, without submitting any document, she rushed to this Court by way of filing this writ petition. However, on 17.09.2018, Smt.D.Lakshmi, one of the co-sharers of the property in question, filed a complaint before the answering respondent stating that the petitioner was undertaking repair work without obtaining permission. It is also stated that since the petitioner is making unauthorized construction, the respondent authorities are entitled to take action in accordance with law and as a matter of fact, she was changing the structures from talkies to function hall and further, the husband of the petitioner is running a Hospital in the subject premises without

obtaining permission. In those circumstances, he prays for dismissal of the writ petition.

The case of respondent No.3 is that she is one of the co-sharers of the subject premises as she being the legal heir of late A.Venkatadri; that without consent of the other co-sharers, the petitioner cannot occupy and undertake repair works and put the property to use without accounting for the income from the same and that she gave a complaint to respondent No.1 against the petitioner with regard to carrying out repair works in the Talkies without obtaining permission.

Heard learned counsel for the petitioner, learned Standing Counsel for respondent Nos.1 and 2 and learned counsel for respondent No.3.

Learned counsel for the petitioner has placed on record a copy of the judgment, dated 20.11.2013, rendered by the learned II Additional District Judge (FTC), Khammam, in O.S.No.18 of 2009 filed by respondent No.3 seeking partition of the suit schedule properties.

A perusal of the said judgment discloses that the trial Court by recording a finding that the petitioner herein, who is D3 in the suit, has been maintaining the property by paying tax etc., and taking necessary steps to protect the property, allotted 0.21 ps share to respondent No.3, 0.21 ps share to defendant No.2 in the suit and 0.58 ps share to the petitioner herein. It may be noted

that notwithstanding the rights of the other co-sharers in the subject premises, the trial Court observed that the petitioner is in possession of the subject premises. This clearly supports the case of the petitioner.

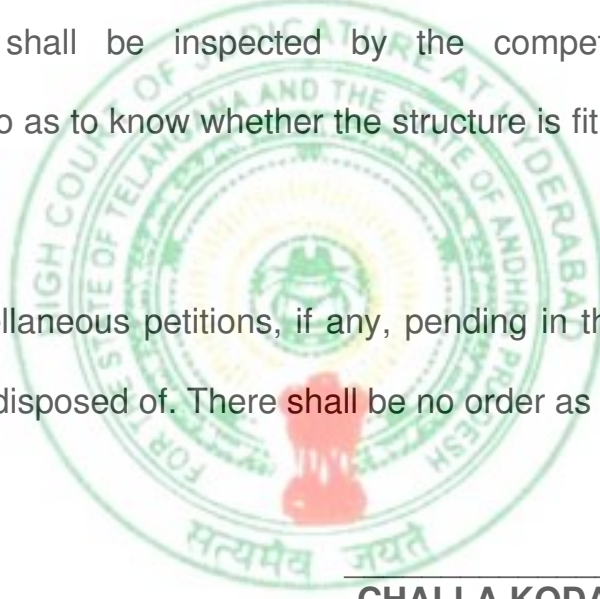
It may be clarified that the petitioner is not in exclusive possession of the subject premises on account of the fact that the other co-sharers are having right in it and she is only a custodian till the property is divided by metes and bounds i.e., till passing of a final decree in terms of the judgment, dated 20.11.2013, which is deemed to have become final. It may be noted further that though there are disputes between the petitioner and her sibling, a co-sharer, the municipal authorities may insist on the petitioner for obtaining permission before any construction activity is undertaken in the subject premises.

In those circumstances and considering the assertion of the petitioner that she had already approached the municipal authorities seeking permission to undertake repair works in the subject premises, as admitted by respondent No.1 in the counter-affidavit, the writ petition is disposed of with the direction to the respondent authorities to consider the request of the petitioner for undertaking repair works in the subject premises. However, in view of change in the procedure, for undertaking repair works in the subject premises, she shall approach the respondent authorities by filing a proper application with requisite fee. As and when such application is received, the respondent

authorities shall process the same without regard to the internal disputes between the petitioner and respondent No.3 or any other co-sharers, and pass orders in accordance with law. This order in any way shall not be construed as depriving the rights of the other co-sharers. Further, grant of permission by the municipal authorities shall not come in the way of a final decree being passed.

In view of the fact that the subject premises was constructed in 1960s, the respondent authorities shall ensure that the same shall be inspected by the competent structural engineers so as to know whether the structure is fit for occupation or not.

Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of. There shall be no order as to costs.



CHALLA KODANDA RAM, J

Dt:09.08.2018

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