

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.1591 of 2017

ORDER:

This Contempt Case is filed by the petitioner herein to punish the respondents under the Contempt of Courts Act, 1971 for alleged willful disobedience of the order dt.21-09-2016 in W.P.No.30346 of 2016.

2. In the said Writ Petition, the 1st respondent is the State of Telangana, the 2nd respondent is the Commissioner, GHMC, Hyderabad, and the 3rd respondent is the Deputy Commissioner, GHMC, Malkajgiri Circle-17, Malkajgiri, Ranga Reddy District.

3. It is not in dispute that the petitioner applied for building permission on 21-02-2014 for construction of a residential house in plot Nos.29 and 30 of extent of 400 sq yds in Sy. No.844/20 situated at new Venkateswara Nagar, Malkajgiri Municipality, Circle-17, Secunderabad. Since no action was taken thereon by the respondents herein, petitioner challenged the said inaction in W.P.No.30346 of 2016 and sought a direction to the respondents to forthwith issue building permission as sought by the petitioner in his application dt.21-02-2014.

4. In the counter affidavit filed by the respondents, it was admitted that the Assistant Director, Survey of Land Records, Ranga Reddy District, had inspected the plots of the petitioner and informed

the 2nd respondent herein that petitioner's property is existing in Sy. No.844/20 as was being contended by the petitioner. However, it was contended that the learned Standing Counsel's legal opinion was being reviewed by the Commissioner, GHMC. It was also stated that the petitioner was not in physical possession of the land and that it was an open place surrounded by the compound wall constructed by the GHMC.

5. The said Writ Petition was allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by the respondents and a direction was given to the respondents to issue building permission subject to compliance by the petitioner with all formalities prescribed by the GHMC Act,1955 and the Rules made therein.

6. The Court held that GHMC had not claimed over title to the property and that was the reason why it rejected the application of the petitioner for building permission. It also held that the GHMC did not contend that the property claimed by the petitioner is not located in Sy. No.844/20 and there is no valid reason why respondent Nos.2 and 3 could not grant permission to the petitioner to make construction.

7. Though the Writ Petition was allowed on 21-09-2016 and a copy thereof was served on the respondents on 21-10-2016, the respondents did not release the approved plan to the petitioner and

also did not pay the costs of Rs.10,000/- as directed by this Court. Therefore, petitioner filed this Contempt Case.

8. In this Contempt case, the Commissioner of the GHMC was impleaded as 1st respondent and the Deputy commissioner, GHMC, Malkajgiri Circle-17 was impleaded as 2nd respondent.

9. Notice to the respondents was ordered by this Court on 11-08-2017.

10. It was informed that the office of the Additional Advocate General would be appearing for respondents and so on 03-08-2018, time for filing counter was granted up to 07-08-2018. Matter was listed again on 08-08-2018. On which date, a counter affidavit was filed by 2nd respondent.

11. In the counter affidavit, it is stated that one Smt. Seetha Mahalakshmi filed a suit in O.S.No.2191 of 2009 before the II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, against the GHMC seeking declaration that she is the owner and possessor of plot Nos.29 and 30 covered by Sy. No.844/20 of new Venkateswara Nagar, Malkajgiri, Ranga Reddy District, that she claimed to have purchased the suit schedule property by way of a sale deed dt.12-02-1968 and that the property was also surrounded by compound wall which the GHMC officials threatened to demolish.

12. It is contended that an *ex parte* decree was passed on 22-02-2012 and the GHMC has filed application to set it aside and the

same had been set aside on 03-04-2018 and it was permitted to file Written Statement. It is stated that the matter is pending consideration before the trial Court. It is stated that in the Written Statement filed in the said suit, the GHMC had pleaded that the property claimed by the said plaintiff belongs to it and that it is covered by compound wall and it is under the control of the GHMC and the claim of the plaintiff is false. It is also contended that the said person had sold the property to the petitioner through a registered sale deed on 16-07-2013 and thereafter, the petitioner had submitted an application seeking building permission in 2016 and since it did not consider the same, the Writ Petition was allowed on 21-09-2016. It is contended that the sale in favor of petitioner is hit by doctrine of *lis pendens* and there is a rule that when disputes are pending before the Court, the authority should not do anything which dilutes the *lis*. It was contended that if the building permission is given to the petitioner, it would amount to diluting the issue before the trial Court and suppressing the facts, petitioner had filed Writ Petition.

13. The Special Government Pleader, attached to the office of the Additional Advocate General, reiterated the said contentions.

14. Learned counsel for the petitioner pointed out that there was no suppression about the suit O.S.No.2191 of 2009 filed by the petitioner's vendor against the GHMC in W.P.No.30346 of 2016 filed by the petitioner and the said fact was specifically mentioned in para-5 of the affidavit filed in support of the Writ Petition.

15. He also gave a copy of the judgment dt.22-02-2012 in O.S.No.2191 of 2009 and pointed out that there was no issue of title raised in O.S.No.2191 of 2009 at all; that petitioner's vendor filed the suit to declare the action of the GHMC officials in threatening to demolish the structures in the plaint schedule property as illegal, for a perpetual injunction restraining GHMC removing the structures in the plaint schedule property; and that the structure referred to by the petitioner's vendor was only the compound wall which she claimed to have constructed to protect her land after its purchase by her on 12-02-1968. Petitioner's vendor had alleged that no statutory notice was issued as per law by the GHMC and therefore it was not entitled to demolish the wall. She also contended that wall was within her property and was not an encroacher. The written statement allegedly filed in the said suit by the GHMC is not placed on record by respondents.

16. A perusal of the affidavit filed by the petitioner in W.P.No.30346 of 2016 makes it clear that the petitioner did mention about the suit O.S.No.2191 of 2009 filed by his vendor before the II Additional Senior Civil Judge, Ranga Reddy District, and there was no suppression of fact as is alleged by the respondents.

17. Secondly, the said suit did not involve any issue of title to the subject property of the petitioner's vendor and the only issue raised therein is whether the GHMC could demolish the compound

wall erected by the petitioner's vendor without issuing a statutory notice.

18. In fact, while disposing of W.P.No.30346 of 2016 on 21-09-2016, the Court considered the counter affidavit filed by the respondents therein and noted that it had not claimed title to the property in question.

19. In the counter affidavit filed in the Writ Petition, only plea taken was that when an inspection was made of the property, it was observed that there was existing open space covered by compound wall and gate which was constructed by the GHMC. According to GHMC, the plots claimed by the petitioner were open spaces and Venkateswara Nagar Welfare Association had represented to the GHMC to save the open land and protect it from encroachers; and acting on the said representation, the GHMC had constructed compound wall. A further plea was also raised that the property was not in Sy. No.844/20 but in 844/16 which was clarified by the Assistant Director, Survey and Land Records stating that the plots in question are in Sy. No.844/20 and not in 844/16.

20. On what basis the GHMC had claimed title to the subject property was not mentioned in the counter affidavit filed in the earlier Writ Petition nor is it mentioned in the counter affidavit filed in the Contempt Case.

21. It is not in dispute that the 2nd respondent had issued a letter dt.27-03-2018 to the petitioner quoting the order of this Court on 21-09-2016 in W.P.No.30346 of 2016 and asking the petitioner to submit building application online, and rejected petitioner's application on 05-06-2018 on the ground that O.S.No.2191 of 2009 was pending before the trial Court and so permission would not be granted.

22. Though the Special Government Pleader contended that belatedly that a Writ Appeal had been moved against the order dt.21-09-2016 in W.P.No.30346 of 2016, it is not disputed that the respondents have not secured any interim order in the said Writ Appeal as of date staying the operation of the judgment in the Writ Petition. Mere filing of the Writ Appeal does not operate as a stay of the order dt.21.9.2016 in WP.No.30346 of 2016.

23. Even otherwise there is no principle that a sale hit by doctrine of *lis pendens* is not valid as is sought and contended by the respondents. A *lis pendens* sale is subject to result of the litigation and is not void.

24. Also no precedent or rule which precludes GHMC from doing anything when a dispute is pending before the Court is brought to the notice of the Court though it is pleaded that giving building permission to petitioner would dilute the issue before the trial Court. When there is no issue relating to title arising in the suit and the only

question was whether the GHMC can remove the compound wall constructed by petitioner's vendor without statutory notice, there is no merit in this plea of the respondent no.2 either.

25. No reason is assigned in the counter affidavit of the 2nd respondent why the costs of Rs.10,000/- awarded in the Writ Petition have also been not being paid to the Writ Petitioner.

26. The conduct of the respondent No.2 in not paying costs awarded in the Writ Petition as well as in not granting building permission to the petitioner in spite of Mandamus issued on 21-09-2016 in W.P.No.30346 of 2016 is, in my opinion, willful and deliberate.

27. Therefore, the Contempt Case is allowed, the 2nd respondent is directed to pay costs of Rs.10,000/- (Rupees Ten Thousand only) and also grant building permission to the petitioner as directed in the order dt.21-09-2016 in W.P.No.30346 of 2016 within one week from the date of receipt of a copy of this order. He is also sentenced to one month Simple Imprisonment and fine of Rs.2,000/- (Rupees Two Thousand only) for willful disobedience of the order passed by the Court on 21-09-2016 in W.P.No.30346 of 2016. The sentence of imprisonment is suspended for a period of six weeks. Petitioner is directed to deposit subsistence allowance @ Rs.300/- per day within six weeks from today.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-10-2018
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