

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.11006 of 2018

ORDER:

The petitioner is the owner of property bearing Municipal No.18-4-122, part of which she purchased under Sale Deed dt.30-05-2008 and part of which was gifted to her under Gift Settlement Deed dt.08-11-1999.

2. The 4th respondent is petitioner's neighbor. The 4th respondent owns property bearing Municipal No.18-4-123 abutting petitioner's house.

THE CASE OF THE PETITIONER

3. Petitioner alleges that 4th respondent started construction in January, 2011 by demolishing the structure existing there without obtaining any permission from the Greater Hyderabad Municipal Corporation (2nd respondent); that the 4th respondent started raising columns and encroached into the common passage where drainage lines are existing ignoring the objections made by the petitioner; that in spite of complaints made by her on 20-01-2011, 17-03-2011, 25-03-2011 and 28-03-2011, the 2nd respondent did not take any action and 4th respondent completed the construction and threatened the petitioner.

4. Petitioner filed W.P.No.11779 of 2011 in this Court challenging the inaction on the part of the officials of the GHMC in removing the illegal constructions made by 4th respondent. It was disposed of on 26-04-2011 directing the 2nd respondent and Asst. City Planner of the GHMC (3rd respondent) to consider petitioner's representations dt.20-01-2011 and 17-03-2011.

5. Thereafter on 28-03-2011, notice under Section 452(1) and 461(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act") was issued by the 3rd respondent to the 4th respondent stating that she illegally constructed the ground and first floor unauthorisedly. The 4th respondent was directed to appear before the Deputy Commissioner on 02-04-2011. Thereafter since no reply was given, order under Section 452(2) of the Act was also passed on 05-04-2011 by the 3rd respondent.

6. This was questioned in W.P.No.15446 of 2011 by the 4th respondent before this Court.

7. Petitioner got impleaded in the said Writ Petition. The 4th respondent took a plea in the said Writ Petition that she has made an application on 25-06-2011 under Section 455-A of the Act for regularization of the unauthorized construction made by her. This Court disposed of the said Writ Petition on 02-08-2011 opining that petitioner ought not to have raised construction without obtaining the building permission; that there was

no illegality in issuing the order under sec.455(2) of the Act; and though the Writ petition would have to be dismissed, in view of the plea of 4th respondent that she made application for regularization dt.25-6-2011, the 2nd respondent should consider it after giving notice to the petitioner, calling for her objections and give an opportunity of personal hearing to both parties and to decide in four months. It is also noted in the said order that 4th respondent will not raise any further constructions particularly on the rear side abutting the house of petitioner, which had not been done by that date, till a final decision is taken on the application for regularization made under Section 455-A of the Act by the 3rd respondent.

8. Petitioner contends that 4th respondent, in spite of the said order, completed the construction even towards the house of the petitioner.

9. Petitioner contends that in fact no application under Section 455-A of the Act was made by the 4th respondent on 25-06-2011 as was informed to this Court in W.P.No.15446 of 2011 but an application was made on 04-11-2011 by 4th respondent seeking permission to make a new construction in her property; this was rejected on 15-11-2011 by the 3rd respondent and 4th respondent was directed to remove the unauthorized construction within one week; thereafter the 4th respondent filed O.S.No.191 of 2012 before the VI Junior Civil Judge, City Civil Court, Hyderabad against the

3rd respondent for perpetual injunction restraining the 2nd respondent's officials from interfering with her property or demolishing it; and petitioner got impleaded therein and the suit was disposed on 12-06-2015 in the following manner:

“In the result, the suit is decreed without costs by granting perpetual injunction in favour of plaintiffs for residential purpose, if old structure is existing and only repairs are being carried out by the plaintiffs over the suit schedule properties and if the GHMC finds any new construction over the suit schedule properties, then the defendant is at liberty to proceed against plaintiff's new construction by following due process of law.”

10. Petitioner contends that 4th respondent as well as 2nd respondent intentionally mislead the Civil Court into thinking that only repairs were being carried on of an older structure; that this is factually incorrect; and the said judgment was obtained by playing fraud on the Civil Court in view of the finding recorded in W.P.No.15446 of 2011 that 4th respondent had made new construction without a building permission.

11. Petitioner contends that thereafter representation was given by petitioner on 13-03-2018 to the Zonal Commissioner of the 2nd respondent as well as 3rd respondent but they did not take any action to remove the illegal constructions made by 4th respondent. Therefore the petitioner was forced to file Writ Petition.

THE STAND OF THE GHMC

12. Respondent Nos.2 and 3 filed counter-affidavit denying that they permitted the 4th respondent to go ahead with the construction activity in spite of the repeated complaints of the petitioner.

13. It is contended that after the order was passed in W.P.15446 of 2011, the officials of the GHMC had dismantled the illegal constructions and closed the wall on 26-03-2011. According to the 2nd respondent, when the Officials inspected thereafter, they did not find any construction of shelves towards the wall of the petitioner as was alleged by petitioner.

14. It was also denied that 4th respondent encroached the property of the petitioner and it is stated that the property of 4th respondent measures 100 sq. mts while the construction made by her is only in 93 sq. mts.

15. It is alleged that the petitioner did not file any Contempt Case pleading inaction on the part of respondents in taking action pursuant to the order passed in W.P.No.11779 of 2011.

16. It is admitted that notice under Sections 452(1) and 461(1) of the Act was issued on 28-03-2011 and order under Section 452(2) of the Act was passed on 05-04-2011. It is also admitted that there was a direction of this Court on 02-08-2011 in W.P.No.15446 of 2011 to dispose of 4th respondent's application under Section 455-A of the Act

within one month after considering petitioner's objections and the said application was rejected on 15-11-2011 by 3rd respondent and that a direction was given to the 4th respondent to remove the illegal constructions. It is stated that a final notice under Section 636 of the Act was also issued on 03-12-2011.

17. It is further contended that 4th respondent gave another representation on 11-01-2012 to the 2nd respondent to consider her application under Section 455-A of the Act in respect of violation of front set back and that the same was also rejected on 17-01-2012.

18. It is stated that subsequently when the Municipal officials went to demolish the structures erected on 23-01-2012, the police did not give *bandobast*; that the demolition date was re-fixed as 31-01-2012; but on that day, the 4th respondent produced an interim order of the VI Junior Civil Judge, City Civil Court, Hyderabad stopping the demolition.

19. It is further stated that though the suit was decided on 12-06-2015, the 4th respondent made a further application under the Building Regularization Scheme as per G.O.Ms.No.152 dt.02-11-2015 on 30-11-2015 and the same is pending with the 2nd respondent. The 2nd respondent contends that the structures consisting of ground and 1st floors are in existence from 2012 prior to cut off date of 28-01-2015 and Building Regularization Scheme

application is pending with the Corporation and the said application of 4th respondent cannot be rejected.

20. It is stated that 2nd respondent issued a letter on 27-01-2017 to the petitioner informing her that they would take further action on the outcome of the Building Penalization Scheme application of the 4th respondent by following due process of law.

21. Reference is also made to an order dt.18-10-2016 in W.P. (PIL) No.63 of 2016 wherein this Court had directed that applications for regularization made pursuant to G.O.Ms.No.152 dt.02-11-2015 be processed and if they decide to reject for regularization, they can communicate the orders of rejection to the applicants concerned, and thereafter take action for demolition of the illegal structures in accordance with law and in case where the Corporation intends to tentatively decide to regularize the illegal structures, such a decision shall merely be recorded in the file, and shall neither be given effect to nor shall it be communicated to the applicants, pending further orders from the Court.

THE STAND OF 4TH RESPONDENT

22. The 4th respondent also filed a counter-affidavit refuting the contentions of the petitioner.

23. It is asserted that since the 4th respondent's property is 100 sq. mts, the 4th respondent had been informed by local heads that no

permission would be required under Law for making construction as per Rules and so she had commenced construction and completed it. Reference is made to G.O.Ms.No.86 dt.03-03-2006, which permits construction in property area less than 100 sq. mts adjacent to road having width of 12 mts with setbacks only on front side and not on the three sides. Reference is also made to G.O.Ms.No.168 dt.07-04-2012, which also mentions that no set backs are required.

24. While admitting that petitioner is the immediate neighbor of 4th respondent on the southern side, it is alleged that petitioner is harassing the 4th respondent by filing complaints on frivolous grounds compelling the 4th respondent file W.P.No.15446 of 2011 and also O.S.No.191 of 2012 apart from application under Section 455-A of the Act. It is alleged that 4th respondent made application on 05-12-2015 for regularization of structure constructed by her as per G.O.Ms.No.152 dt.02-11-2015 and since the said application is pending, no relief can be granted to the petitioner.

THE CONSIDERATION BY THE COURT

25. I have noted the contentions of both sides.

26. From the facts narrated above, it is clear that a new structure was erected by 4th respondent in her property in 2011 causing the 2nd respondent to issue notice under Section 452(1) and 461(1) of the Act on 28-03-2011 alleging that the 4th respondent constructed ground floor and first floor without any authorization. Since no reply was

submitted to the said show cause notice, an order under Section 452(2) of the Act was passed on 05-04-2011 proposing to take action under Section 636 of the Act.

27. Even thereafter since no action was taken, petitioner filed W.P.No.11779 of 2011, which was disposed of on 26-04-2011 asking the 2nd respondent to consider petitioner's representations dt.20-01-2011 and 17-03-2011 and take further action after giving notice to the 4th respondent.

28. It is not in dispute that claiming that an application under Section 455-A of the Act was filed on 25-06-2011, the 4th respondent approached this Court by filing W.P.No.15446 of 2011. It was disposed of by this Court on 02-08-2011 opining that petitioner ought not to have raised construction without obtaining the building permission; that there was no illegality in issuing the order under sec.455(2) of the Act; and though the Writ petition would have to be dismissed, in view of the plea of 4th respondent that she made application for regularization dt.25-6-2011, the 2nd respondent should consider it after giving notice to the petitioner, calling for her objections and give an opportunity of personal hearing to both parties and to decide in four months. It is also noted in the said order that 4th respondent will not raise any further constructions particularly on the rear side abutting the house of petitioner, which had not been done by that date, till a final decision is taken on the application for

regularization made under Section 455-A of the Act by the 3rd respondent.

29. However, photographs filed by petitioner along with the Writ Petition clearly show that in spite of this direction, the 4th respondent completed the construction adjacent to the petitioner's property and thus deliberately and willfully violated the Court orders.

30. In fact, the very submission of 4th respondent to the Court when it decided W.P.No.15446 of 2011 that there was an application made on 25-06-2011 under Section 455-A of the Act is false because there is no such application filed by 4th respondent or by 2nd respondent along with their counter-affidavits as rightly contended by the learned counsel for petitioner. An application was made by 4th respondent only on 04-11-2011 (after W.P.No.15446 of 2011 was disposed of on 25-6-2011) seeking grant of permission for making construction. This was rejected on 15-11-2011 specifically stating that 4th respondent has misrepresented the facts and that having filed a plan of the property to be dismantled, had constructed a structure consisting of ground and first floor without leaving the mandatory front spaces; and therefore, there was no question of considering the application of the 4th respondent for regularization under Section 455-A of the Act.

31. But for the plea of 4th respondent that she had filed an application under Sec.455-A of the Act on 25-6-2011, the said Writ

petition would have been dismissed since the Judge in the said case upheld the order dt.5-4-2011 under sec.452(2) of the Act. Thus the 4th respondent had played fraud on the Court and stalled the inevitable demolition of the new structure found erected by her by raising a false plea that she made an application for regularization under Sec.455-A.

32. The order dt.15-11-2011 of the 3rd respondent rejecting the building permission application made on 4-11-2011 and refusing to consider the claim under Sec.455-A of the Act has not been questioned by the 4th respondent.

33. After this rejection on 15-11-2011, admittedly notice under Section 636 of the Act was issued on 03-12-2011 asking the 4th respondent to remove the unauthorized construction of ground and first floor in the subject premises within three days.

34. However, before it could be implemented, the 4th respondent approached the VI Junior Civil Judge, City Civil Court, Hyderabad and obtained an interim injunction against the Corporation on 27-01-2012.

35. Ultimately, the said suit was disposed of on 12-06-2015 granting perpetual injunction in favour of the 4th respondent for residential purpose if old structure is existing and only repairs were carried out by the 4th respondent over the property and giving liberty

to the 2nd respondent to remove the new constructions, if any, made by 4th respondent by following due process of law.

36. Thus, there was no impediment to the 2nd respondent to remove the illegal constructions made newly by the 4th respondent in 2011 after disposal of the said suit.

37. The contention of the respondent Nos.2 and 3 that 4th respondent made an application for regularization under G.O.Ms.No.152 dt.02-11-2015 as per the Building Regularization Scheme notified therein on 30-11-2015 and that the same is pending, cannot be countenanced for the reason that once the contention of the 4th respondent for regularization under Section 455-A of the Act has been rejected on 15-11-2011, in the absence of any provision for reviewing the same, the question of considering the second application dt.30-11-2015 for regularization under the Building Regularization Scheme notified under this G.O., does not arise.

38. Moreover, clause 9(i) of the said G.O. itself prohibits regularization of structures made where *sites are under legal litigation*/disputes regarding ownership of the site/building exist.

39. Though learned counsel for 4th respondent sought to contend that the said clause has no application in the present context since there is no dispute about title of the site owned by 4th respondent, the said contention is not tenable for the reason that the first portion of the

clause prohibits regularization of unauthorized constructions in “sites under legal litigation”. Admittedly, such litigation exists as regards construction being made by 4th respondent though the issue of title may not be involved. The category “sites under litigation” is a distinct and separate category from the category “disputes regarding ownership of the site/building”. The 4th respondent’s reliance on the latter is not tenable and admittedly the site in question would come under the category of being under “legal litigation” in view of filing of W.P.No.11779 of 2011, W.P.No.15446 of 2011 and O.S.No.191 of 2012 in respect of the construction illegally made by 4th respondent in the said property.

40. Admittedly, even under G.O.Ms.No.86 Municipal Administration and Urban Development (M) Department dt.03-03-2006, permission for making construction is required even for plot size upto 100 sq. mts by providing a front set back of 1.5 mts., where the abutting road width is 12 mts. No such permission had been obtained by the 4th respondent from the Greater Hyderabad Municipal Corporation to make the construction of ground and first floor in the site owned by 4th respondent.

41. Admittedly, the front set back was not adhered to by the 4th respondent since staircase was constructed in front open space and that was why regularization under Section 455-A of the Act was rejected on 15-11-2011.

42. The photographs filed by the petitioner show that the property of the 4th respondent is touching the wall of the petitioner and would certainly interfere with the air circulation and light provision to the petitioner's property. This was done by 4th respondent in spite of the injunction granted in WP.No.15446 of 2011 not to make any construction abutting the house of the petitioner.

43. No doubt, in W.P. (PIL) No.62 of 2016, a Division Bench of this Court passed the following order:

“We consider it appropriate, in such circumstances, to modify the earlier order, and direct that the applications for regularization be processed in accordance with the regularization scheme notified in G.O.Ms.No.152 dated 02.11.2015. In case, the GHMC or the other Municipal Corporations in the State of Telangana, after considering the applications for regularization, decide to reject the request for regularization, it is open to them to communicate the orders of rejection to the applicants concerned, and thereafter take action for demolition of the illegal structures in accordance with law. In such of those cases where the GHMC, or the other Municipal Corporations, tentatively decide to regularize the illegal structures, such a decision shall merely be recorded in the file, and shall neither be given effect to nor shall it be communicated to the applicants, pending further orders from this Court.

Counter-affidavits shall be filed, on behalf of the respondents, within three weeks.”

44. Since

- i. the 4th respondent had played fraud on this Court by claiming to have filed an application for regularization under Section 455-A of the Act on 25-06-2011 without there being any such application; and
- ii. the subsequent application dt.4-11-2011 by 4th respondent for regularization was also rejected on 15-11-2011 on the ground that 4th respondent made construction of a staircase in the front open space and misrepresented the facts; and
- iii. the said order has not been challenged by 4th respondent; and
- iv. even the order of the Civil Court in O.S.No.191 of 2012 permits the 2nd respondent to remove the illegally made new constructions; and
- v. it is not in dispute that new constructions were made by 4th respondent in 2011 without obtaining any permission from the Corporation;

the 2nd respondent cannot now take the stand that the Building Regularization Scheme application made by 4th respondent is entitled for favourable consideration by 2nd respondent. This clearly indicates the collusion between the 4th respondent and the officials of 2nd respondent including the 3rd respondent.

45. In **K.M. Pratap v. State of Telangana and others**¹, this Court held that a violator of the Municipal Building Laws is not entitled to benefit of regularization under the Building Regularization Scheme notified by the State under G.O.Ms.No.152 dated 02.11.2015 when once there was already a rejection of such application earlier quoting the decision of the Supreme Court in **Royal Paradise Hotel (P) Ltd. v. State of Haryana**² and **Friends' Colony Development Committee v. State of Orissa**³. It held that the buildings constructed by respondent nos.9 to 11 in that case cannot be allowed to be regularized since such regularization frustrates the concept of planned development and the laws regulating the building activities in urban areas. It held that such regularizations would amount to conferring undue favour on persons who are indulging in lawlessness and thereby cheating the society at large. It advocated zero tolerance by the High Court by ruthless demolition of illegal constructions in order to ensure that defiers of law are not rewarded.

46. In the instant case, the 4th respondent had played fraud on the Court in WP.No.15446 of 2011 by stalling demolition of the illegal structures erected by her by pleading a non-existent regularization application under Section 455-A dt.25.06.2011 and also violated the said order by constructing abutting the petitioner's property which was prohibited in the said order.

¹ 2016 (5) ALD 252

² (2006) 7 SCC 597

³ (2004) 8 SCC 733

47. Therefore, the 2nd respondent and the 3rd respondent are directed to forthwith reject 4th respondent's application for regularization under the Building Regularization Scheme made on 30-11-2015 and then execute the order dt.05-04-2011 passed under Section 452(2) of the Act and the consequent order under Section 636 of the Act passed on 03-12-2011 and 07-01-2012 and remove the unauthorizedly constructed ground and first floors in the premises bearing No.18-4-123 situated at Kalvagadda, Aliabad, Shamsheer Ganj, Hyderabad, within four (04) weeks.

48. The Writ Petition is allowed with the above directions. The 4th respondent shall pay costs of Rs.5,000/- (Rupees Five Thousand only) to the petitioner.

49. As a sequel, miscellaneous petitions, if any pending, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-06-2018

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