

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.11262 of 2018

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing for the first respondent, Sri Chatla Madhu, learned Standing Counsel for GHMC, appearing for the respondent Nos.2 to 5, and Sri B.Vijayasen Reddy, learned counsel appearing for the sixth respondent, apart from perusing the material available before the Court.

According to the petitioner, he is the absolute owner of the plot No.83 bearing House No.12-7-112/83, Kesav Nagar Colony, New Mettuguda, Secunderabad having purchased the same by way of a registered sale deed vide document No.1502/2000, dated 28.07.2000. It is further submitted that, after obtaining permission for construction of building from the GHMC, petitioner herein made construction of ground + 2 floors on the said plot and residing therein along with his family members.

The sixth respondent herein purchased plot No.82, which is a neighbouring plot situated on the Northern side of the petitioner's plot, in the year, 2016 and he applied for permission from the respondent-GHMC authorities for construction in the said plot. It is alleged in the affidavit, filed in support of the Writ Petition, that, without following the Building Rules and without leaving any set backs, the sixth

respondent herein started making construction in plot No.82. It is further stated that, aggrieved by the said illegal construction, petitioner herein made a complaint to the respondent authorities on 23.02.2018.

In the above background, alleging inaction on the part of the respondent-GHMC, this Writ Petition came to be instituted. While permitting to issue notice to the sixth respondent, this Court, on 17.04.2018, passed the following order:

“Pending further orders, 6th respondent shall not make any construction in the subject property and respondent Nos.2 to 5 shall ensure the same if necessary by taking police aid. In the meantime, the I Additional Junior Civil Judge, City Civil Court, Secunderabad, shall decide I.A.No.276 of 2018 in O.S.No.201 of 2018, filed by 6th respondent against second respondent, within three weeks from today and report compliance to this Court”.

A counter-affidavit, deposed by the Assistant City Planner of the respondent-GHMC, is filed on behalf of the respondent Nos.2 to 5. The sixth respondent herein also filed a counter-affidavit opposing the Writ Petition. According to the counter-affidavit, filed by the official respondents herein, the sixth respondent, owner of the plot No.82, admeasuring 166.66 sq.yards, obtained permission for construction of stilt and two upper floors vide permit No.3/C18/09637/2017, dated 10.10.2017, and started construction without issuing any notice, under Section 440 of the Hyderabad Municipal

Corporation Act, 1955 (for brevity, 'the Act') prior to commencement of the construction work and made deviations against the sanction plan by not maintaining the set backs as per the sanctioned plan and also raised RCC columns over and above the permitted floors. It is further stated, in the counter-affidavit of the official respondents, that the respondent-GHMC issued show cause notice, dated 16.03.2018, under Section 452(1) and 461(1) of the Act, and also got the construction work stopped. It is further stated that the sixth respondent did not give any reply to the said show cause notice and proceeded further by laying the centering work of the third floor which made the respondent authorities to issue another notice, dated 29.03.2018, under Section 452 (2) of the Act, and removed the centering work in the third floor and got the construction work stopped. It is further stated that the sixth respondent instituted O.S.No.201 of 2018 and also I.A.No.276 of 2018 on the file of the I Junior Civil Judge, City Civil Courts, Secunderabad and obtained interim order against the respondent-GHMC.

During the course of arguments, it is submitted by the learned counsel for the petitioner that, in view of the deviations made by the sixth respondent to the sanctioned plan, petitioner herein is sustaining irreparable loss and hardship and is not in a position to get proper air and ventilation. It is further submitted by the learned counsel for the petitioner that, in view of the failure on the part of the

sixth respondent, in leaving set backs, as mandated in the Rules, the petitioner herein is put to lot of inconvenience.

On the other hand, it is submitted by the learned Standing Counsel that, in view of the deviations made by the sixth respondent herein, the respondent authorities already initiated action under Section 452 of the Act and issued notices to the said effect and that they will proceed in accordance with law.

On the contrary, it is submitted by the learned counsel for the sixth respondent that the deviations pointed out in the present case are only minor in nature and, if the petitioner herein is aggrieved by the same, it is open for him to have his claim adjudicated before an appropriate civil Court for his easementary rights, if any, and the same cannot be agitated before this Court, under Article 226 of the Constitution of India. It is further submitted that there is no public interest involved.

It is pertinent to note that the State Government enacted the Act and framed the Rules thereunder in the interest of public only and, undoubtedly and unhesitatingly, the action of the sixth respondent herein frustrates the said public interest and, in the considered opinion of this Court, the contention of the learned counsel for the sixth respondent that, for redressal of his grievance, petitioner herein has to approach the competent civil Court, cannot be sustained in

the eye of law. Admittedly, even as per the sixth respondent herein, there are deviations from the sanctioned plan. It is also required to be noted that the learned Chief Judge, City Civil Court, Hyderabad forwarded the letter of the I Junior Civil Judge, City Civil Court, Secunderabad, stating that the I Junior Civil Judge, City Civil Court, Secunderabad disposed of I.A.No.276 of 2018 and dismissed the injunction petition and vacated the orders. Since there is a statutory violation, the equities, as pleaded by the learned counsel for the sixth respondent herein, in deviation to the statutory provisions of law, cannot be countenanced.

Accordingly, the Writ Petition is disposed of, directing the respondent-GHMC to take action in the matter, strictly in accordance with law, as expeditiously as possible. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

18th June, 2018
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A.V.SESHA SAI, J