

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITIONS No. 6392 AND 22646 of 2017

COMMON ORDER:

Since the 4th respondent in Writ Petition 6392 of 2017 is the petitioner in Writ Petition No. 22646 of 2017 and since both the Writ Petitions involve same subject matter, they are being disposed of by this common order.

Writ Petition No. 6392 of 2017 was filed to declare the action on the part of the official respondents, especially the 3rd respondent Nalgonda Municipality in allowing the unauthorized constructions by the 4th respondent without any permission, encroaching the common lane existing between the petitioner and himself as arbitrary and illegal.

Whereas Writ Petition No. 22646 of 2017 is filed seeking a direction to the 2nd respondent Nalgonda Municipality to process the Application dated 08.09.2016 submitted for granting permission for construction of G+2 floors at H.No. 5-6-292, Bottuguda, Nalgonda Town and to declare the notice dated 17.04.2017 issued by the 2nd respondent as illegal and arbitrary.

For convenience sake, the pleadings in Writ Petition No. 22646 of 2017 are taken up for discussion:

Petitioner's case is that his father late K. Tirumalaiah purchased the property bearing D.No. 5-6-292, Subash (Red Cross) Road, Nalgonda (subject road) *vide* sale deed dated 18.01.1974, eastern boundary of which is shown as 15.24 meters or 50' road in the sale deed and that he has been carrying on M/s Hari

Enterprises therein. It is his case that when encroachments were made on the subject road resulting in traffic chaos, he had made representations / complaints to the municipal authorities and since no action was taken, Writ Petition No. 10360 of 2010 was filed, wherein the 2nd respondent was directed to cause inspection of the constructions made on the subject road and take necessary action in accordance with law, including demolition of the building by following the due process, if any encroachments were found. Complaining disobedience of the said order, C.C. No. 544 of 2015 was also filed, asserts the petitioner. In the said Contempt Case, a stand was taken that width of the road is only 30' and encroachments were removed thereon. The petitioner again filed Writ Petition No. 31564 of 2016 to direct the respondents to maintain 50' road, but no action has been taken by them.

While the matter stood thus, the petitioner made the Application on 11.03.1996 requesting the 2nd respondent to grant permission for construction of G+2 building since the earlier construction became old. Respondent No.2, through the memo dated 29.04.2016, returned the proposal, which was served on the petitioner on 10.05.2016. Immediately thereafter, though he had made a representation on 11.05.2016 contending that the refusal memo is a bundle of misstatement of facts, no action was taken thereon. The Application dated 08.09.2016, enclosing thereto fresh plan was submitted and since officials had informed him to pay Rs.5,000/-, he had taken the demand draft for the said amount on 20.10.2016. However, on 08.11.2016, the

Commissioner had threatened the petitioner and openly declared that he would not give permission for making construction and hence, he was forced to lodge a complaint to the Sub-Inspector of Police, Town Police Station, Nalgonda. A representation was also submitted to the District Collector about what had transpired on 08.11.2016. Thereafter on 30.12.2016, a demand draft for a sum of Rs.8,500/- was submitted along with the representation dated 30.12.2016. The 2nd respondent addressed a letter, which was received by the petitioner on 29.01.2017 long after four months from the date of submission of the second Application dated 08.09.2016 directing him to pay Rs.19,334/- towards building permission fees and other necessary charges in accordance with the said letter. The same was complied with by the petitioner by enclosing a demand draft for Rs.5,834/- and submitted the same on 30.01.2017, however, questioning as to how and in what manner, demanding Rs.19,334/- was justified. As there was no response thereafter, it is stated, the petitioner had demolished the existing construction in the 2nd week of February 2017, laid foundation and commenced the construction in accordance with the plan submitted. At that stage, the 2nd respondent issued the notice dated 03.03.2017 alleging that the petitioner was making constructions without obtaining permission and without leaving set backs. Though the notice was dated 03.03.2017, the same was posted on 06.04.2017 and was received by the petitioner on 07.04.2017. Thereafter, the petitioner submitted representation on 10.04.2017 pointing out that the Application made by him was kept pending and the reasons are not forthcoming as to why the

same has not been disposed of. The 2nd respondent, without replying or considering the objection of the petitioner, had issued another notice on 17.04.2017 alleging that he (petitioner) had made constructions without obtaining plan and directed him to stop the construction and submit a reply within two days. Accordingly, a reply dated 20.04.2017 was submitted pointing out that he was making construction in 87 meters area only leaving sufficient set backs, whereas the old construction made in 1975 was lying in an area of 126 meters. The petitioner asserts that he had made the Application on 08.09.2016 and started construction in 87 meters strictly in accordance with the rules on the subject, but however, without taking any action against the other persons, who are making construction on the public road, the respondent authorities have been harassing him unnecessarily. The whole action on the part of 2nd respondent in bringing out proceedings dated 17.04.2017 is nothing but a colourable exercise of power and not taking any action on the Application for sanction of plan is nothing but arbitrary, submits the petitioner. The 2nd respondent failed to discharge his statutory duties, and further taking steps to pull down the constructions at the instance of the local political leaders.

A counter-affidavit was filed on behalf of the 2nd respondent Municipality. The averment of the petitioner as to existence of 50' road is denied. It is admitted that after examination of the Application of the petitioner dated 11.03.2016, since it was found that the plot area, as per the plan submitted being 118.54 square

yards, the proposal was rejected for construction of stilt + 1st + 2nd floors. As per G.O.Ms.No. 168, dated 07.04.2012, the petitioner is not eligible for stilt floor as the plot is less than 200 square meters. Further, it is asserted that the petitioner had also failed to produce the previous sanctioned plan as the one which is submitted is not legible to ascertain the extent and area of the plot and the extent for which permission was granted earlier. It is also asserted that the petitioner was directed to submit a revised plan in accordance with the building rules in force. The petitioner WAS intentionally insisting the respondents' office to process the building permission without submitting the revised plans as mentioned by their office earlier. The petitioner was demanded a sum of Rs.19,334/- towards development charges and he was also required to pay building permission fee and 1% labour cess on Rs.19,311/- as per G.O.Ms.No.112, dated 15.12.2009 and further, the petitioner is required to submit a mortgage deed towards 10% of built up area in favour of the Commissioner, Nalgonda Municipality since the proposed building is G+2 as per Rule 25(d) of G.O.Ms.No. 168, dated 07.04.2012. The assertion of the petitioner that he had commenced construction work as per submitted plans is denied and it is asserted that the constructions made are without leaving setbacks and further, he occupied the lane by 3'. As the petitioner was proceeding with the construction unauthorisedly, invoking Sections 228(1)(2), 216(3), 228(3) and 360 of Telangana Municipalities Act, 1965, though notices dated 03.04.2017 and 17.04.2017 were issued to him to stop the same, neither reply was submitted nor the construction was stopped, however, proceeded

to make construction and laid three slabs. The allegation of *mala fides* on the part of the respondent is denied.

A reply affidavit was filed on 01.04.2018 by the petitioner asserting that he is eligible in terms of G.O.Ms. No. 7, dated 05.01.2016 to lay stilt floor also and the said aspect is brought to the notice of the 2nd respondent, who attempted to misled this Court by bringing the latest G.O. It is stated that the inability on the part of the petitioner to produce the sanctioned plan cannot be put against him and that individual buildings in plot up to 300 square meters in municipalities are exempted from executing the mortgage deed, hence, the question of executing mortgage deeds comes into operation only after approval proceedings reaches a logical end but not at the threshold. The petitioner asserts that he had commenced the work as per the submitted plan and denied the allegation that he had been carrying on the construction work in deviation of the plan, occupying the lane by 3'. The fact remains till today was that the 2nd respondent had not returned the plan submitted by him and the Assistant Town Planning Officer, in fact, had made an endorsement approving the plan submitted by him and forwarded the same to the Joint Collector, however, the same was kept pending by the 2nd respondent without approving. It is asserted that the 2nd respondent had taken inconsistent stands from time to time establishing his *mala fide* nature.

Learned counsel for the petitioner in Writ Petition No. 22646 of 2017 *Sri V.S.R. Anjaneyulu*, drawing attention of this Court to various developments, particularly the representations made by

the petitioner from time to time, in sum and substance, would submit that the respondent authorities with a *mala fide* intention had bore grudge against the petitioner on account of his pro active approach in bringing to their notice various illegal constructions that were being made on the 50' road. He further submits that the respondent authorities were not able to digest the fact that the petitioner had filed Contempt Case for disobedience of the orders of this Court,. The *mala fides* on the part of the respondents is evident from their non-responsive nature, hence, they cannot find fault with the petitioner, contends the learned counsel. He would also submit that as the petitioner had waited for the approval, as required in law, he is right in proceeding further and making constructions, as there is a deeming provision in terms of the Andhra Pradesh Municipalities Act, 1965. According to him, even as on date, nothing prevents the respondents from sanctioning the plans and it is only on account of the Writ Petition filed by the neighbour and taking advantage of orders made therein, the respondent authorities have not been considering the Application of the petitioner. In the facts of the case, the learned counsel further submits that the *mala fide* action being evident, appropriate orders may be issued to the respondent authorities to process the Application of the petitioner strictly in accordance with law.

Learned counsel *Sri Radha Krishna* appearing for the petitioner in Writ Petition No. 6392 of 2017 submits that it is evident from the facts on record that the petitioner in Writ Petition

No. 22646 of 2017 had made construction without obtaining permission, and since there is violation, the respondent authorities ought to have taken action against him.

On the other hand, Sri N. Praveen Kumar, learned Standing Counsel for the 2nd respondent Municipality, reiterating the contents in the counter-affidavit, would submit that it is only on account of non-responsiveness on the part of the petitioner to the notices issued from time to time, calling for information, his Application was kept pending and in the meanwhile, action was proposed to be taken on account of the complaints made by the neighbours and the orders of this Court in earlier Writ Petition.

At the outset, it may be noted that various issues, which have been set out in the affidavit, were, in precise, sought to be extracted only to avoid any allegation that they were not discussed.

The case raises a simple issue whether there were *mala fides* on the part of the respondent authorities in processing the Application of the petitioner and assuming so, there are *mala fides*, whether that would give a right to the petitioner to proceed with the construction and if such constructions are to be made, by a resort to fiction under Section 212 of the 1965 Act, whether they should be in conformity with the relevant municipal laws or not.

To answer this question, it would be necessary for this Court to refer to few of the dates. There is no dispute, on earlier occasion, the petitioner made an Application on 11.03.2016 which came be returned. Though the petitioner had submitted the

representation on 11.05.2016, ventilating his grievance, on account of the fact that his Application came to be refused, he is required to make in law a fresh Application. As a matter of fact, he had made another Application on 08.09.2016 enclosing thereto, a fresh plan. As per the plan submitted by the petitioner, the demolished construction was in 151.48 square yards ie. 126.65 square meters and he had proposed to make construction in 85.43 square meters consisting of ground + 2 floors. It is only on 20.10.2016, the petitioner enclosed a demand draft for Rs.5,000/- which came to be accepted. Thereafter, on 03.12.2016, yet another demand draft for Rs.8,500/- was sent to the authorities of the 2nd respondent. It is not clear from the averments of either the petitioner or the respondents that the petitioner chose to pay Rs. 5,000/- initially and thereafter, Rs.8,500/-. However, the fact of the matter is that, the same came to be accepted by the respondent authorities. For the first time, on 29.01.2017, the petitioner was issued 'intimation notice', directing him to pay Rs.19,334/-. In response to the same, the petitioner on 30.01.2017 (typed as 30.01.2016) enclosed a demand draft for Rs.5,834/-. Thus, the petitioner complied with the demand. Thereafter, the impugned notice dated 03.03.2017 invoking Section 228(1)(2) of the Act came to be issued calling upon the petitioner to submit his explanation as to why action should not be taken by removing / pulling down the unauthorized construction. It may be noted that though the notice is dated 03.03.2017, the same came to be served on the petitioner only on 07.04.2017, as is evident from the proceedings of the respondents dated

17.04.2017. The petitioner thereafter submitted his explanation on 20.04.2017. At that stage, apprehending that the respondents may take coercive steps by demolishing the construction, the petitioner approached this Court and obtained the order of *status quo* on 03.10.2017. Here, it is to be noted that before granting the order of *status quo*, three adjournments were granted to the respondent either to file a counter or to secure instructions which was not done. From the above narration of dates, one thing is clear that, for whatever reasons, the petitioner's Application dated 08.09.2016 was not processed by the authorities.

In this backdrop, the undisputed assertion of the petitioner that from 2001 onwards, he has been objecting the constructions that were made on the road and the specific conduct of the respondent authorities discloses that there seems to be some element of malice in law which is resulting in a hostile treatment being meted out to the petitioner. Even if it is to be accepted, the question arises is whether that would justify the petitioner to proceed with construction taking into account the non-responsive on the part of the respondent authorities on the Application made by him. Answer would have to be in the affirmative on account of the provision which provides for presumption of permission having been granted. In that context, Sections 212 and 213 of the Act may be noticed:

“ 212: Period within which Commissioner is to signify approval or disapproval: Within sixty days after the receipt of any application made under Section 209 for approval of a site or of any information or further information required under rules or bye-laws, the Commissioner shall, by written order, either approve the site or

refuse on one or more of the grounds mentioned in Section 215 to approve the site.

213: Period within which Commissioner is to grant or refuse to grant permission to execute work: Within sixty days after the receipt of any application made under Section 209 for permission to execute any work or of any information or of documents or further information or documents required under rules or bye-laws, the Commissioner shall by written order either grant such permission or refuse on one or more of the grounds mentioned in Section 215 to grant it:

Provided that the said period of sixty days shall not begin to run until the site has been approved under Section 212.”

From the above provision of law, it is clear if the permission is not granted within 60 days, permission is deemed to have been granted. Further, there is deeming provision under Section 214 permitting the petitioners to make the construction. However, what is important to be noticed is that the petitioner is required to make construction within the permissible limits. In the case on hand, there is no dispute that the petitioner had made an Application on 08.09.2016 enclosing a plan. Even assuming that the authorities had considered the Application of the petitioner, and that he was granted permission, his construction will have to be made strictly in conformity with the Application and the plan appended thereto. In that context, the assertions of the petitioner in the Writ Petition be noticed. In various paragraphs, the petitioner had specifically asserted that he has been making constructions in accordance with the Rules available on the subject and as per the plan submitted. However, the allegation of the respondents in the impugned notice is that the petitioner had made constructions in violation of the norms by not leaving the

setbacks and further, not according to the submitted plan, apart from not obtaining prior sanction for making the construction. As the petitioner had failed to respond to the said notice, as directed, the final confirmation order was passed on 17.04.2017 confirming the provisional order issued earlier. Though the petitioner asserted that the explanation dated 10.04.2017 was submitted, the same was neither placed before the Court nor any reference to the same was made in the final order dated 17.04.2017 of the 2nd respondent, so also in the representation dated 20.04.2017 submitted by him.

In the light of the conclusion arrived at by this Court that there is an element of malice in law by the respondents, the petitioner should be given one more opportunity, directing fresh look to be given to the constructions made by him, treating the plan as deemed to have been issued in terms of Section 214 of the Municipalities Act. Viewed from that angle, as on date, there being no dispute that the petitioner had also completed the construction, the 2nd respondent shall cause inspection of the property and the constructions made by him and if the same is in conformity with the plan submitted on 08.09.2016, no further action need be taken. If the same is not in conformity with the sanctioned plan, the respondent authorities shall be entitled to take appropriate action in accordance with law. As the entire issue is being prolonged over two years, the entire exercise shall be completed by the 2nd respondent within six weeks from the date of receipt of a copy of the order.

It is needless to mention that on inspection, if the 2nd respondent comes to the conclusion that the constructions made are in deviation from the plan submitted by the petitioner and not in conformity with the norms fixed under the relevant regulations, the petitioner shall be notified with respect to the same by giving reasonable opportunity, thereafter his explanation be considered and action appropriate be taken.

Subject to the above, Writ Petition No. 22646 of 2017 is disposed of.

So far as Writ Petition No. 6392 of 2017 is concerned, in view of the above discussion, and considering the limited relief sought herein i.e. to remove the unauthorized construction of the 4th respondent in common lane between the petitioner and the 4th respondent (petitioner in Writ Petition No. 22646 of 2017), it is closed.

Consequently, the Miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

24th December 2018

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