

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.16625 of 2008

ORDER:

This Writ Petition is filed to declare the proceedings dated 19.07.2008 of the Tahsildar, Patancheru Mandal-2nd respondent, as illegal and arbitrary. A consequential direction is sought to suspend the proceedings dated 19.07.2008 by permitting the petitioner to proceed with the construction in accordance with sanctioned plan vide permit No.29.04.2007.

Brief facts, according to the petitioners, are that the HMT Employees Co-operative House Building Society Ltd., after purchase of land admeasuring Ac.48.00 situated in Sy.Nos.190, 330 and 329-Part of Ameenpur Village, Patancheru Mandal, approached the HUDA authorities for permission to construct houses for their Employees; since the land that has been purchased by the Society was agricultural land, HUDA would not grant permission for a lay out in respect of the agricultural lands; HUDA called upon the said Society to obtain land conversion certificate; Government issued G.O.Ms.No.500 MA dated 23.10.1991 accepting the conversion; as the Government issued G.O., the Society divided the land into plots for which, HUDA issued a draft lay out and final lay out on 03.05.1993 and 09.01.1995 respectively; thereafter the Society alienated the plots to its members and the purchasers of the said plots have also constructed individual houses after obtaining building permissions; petitioners have approached HUDA seeking permission for construction of flats; HUDA has issued proceedings vide proceedings dated 29.04.2007 accorded permission for construction of the flats and the petitioners have started construction of the flats in the year 2007 and they are almost completed; in the plan, the affected area of FTL has been show as Ac.1.6

guntas in Sy.No.324 and that the apartment of the petitioners were constructed in Sy.No.329; on 11.08.2007 the petitioners received communication from the 2nd respondent stating that the land in Sy.No.329 comes under FTL area of Kotha Cheruvu and that the illegal constructions of the houses are going on in FTL area; petitioners gave reply notice; again on 19.07.2008, a notice was issued by the 2nd respondent, which reads as under:

“It is informed that as per joint survey conducted by the Irrigation officials and Mandal Surveyor it is come to notice that the construction of apartments in Sy.No.329 situated at Ameenpur village is completely comes under FTL area of Kothacheru and illegal construction of houses with out obtaining NOC from concerned authorities.

Therefore, Sri Pandu Ranga Rao, Building R/o Ameenpur village is directed to demolish the construction voluntarily within (10) days otherwise drastic action will be taken against you while booking a criminal case.”

As per the master plan prepared by the HUDA, the plots on which the petitioners have already made constructions do not form part of any water body; as seen from the impugned proceedings, a joint survey conducted by the Irrigation officials and the Mandal Surveyor; when the petitioners who have obtained all the permissions, were not put to notice of the joint survey; even in the master plan, the survey numbers on which the flats are constructed, do not show that it is a water body or an areas that falls within the FTL.

This writ petition came up for admission on 31.07.2008 and this Court granted interim suspension of the impugned proceedings of the 2nd respondent.

A counter-affidavit has been filed by the 2nd respondent stating *inter-alia*, that the tank is spread over in an extent of Ac.99.21 guntas in various survey numbers, including Sy.No.329, in which the petitioners houses are located; suppressing the fact that the subject land is forming

part of FTL of Kotha Cheurvuvu, the petitioners have obtained the lay out permission from the 3rd respondent; a joint inspection was conducted on 27.03.2008, which reveals that the Sy.No.329 is form part of Kotha Cheruvu; on 06.03.2017, the National Green Tribunal directed the respondents to conduct survey of tanks and the land adjacent thereto to note down the encroachments of water bodies; pursuant to the said direction, a joint inspection was conducted by the Revenue, HMDA, Irrigation and Panchayat officials; on the spot inspection, it is revealed that Sy.No.329 is classified as patta land to an extent of Ac.16.34 guntas; out of it, an extent of Ac.10.26 guntas forming part of FTL, an extent of Ac.2.35 guntas is buffer zone area; the unaffected area availed in the said Survey number is Ac.3.13 guntas; admittedly in the said survey number, petitioners have purchased Ac.13.07 guntas and the remaining extent of Ac.1.09 has been recorded in the name of one Katha Krishna and therefore, the petitioners are not entitled for any relief.

Heard the learned counsel for the petitioners, the learned Assistant Government Pleader for Respondents 1 and 2 and the standing counsel for the 3rd respondent. Perused the record.

As seen from contents of the notice dated 11.08.2007 issued by the 2nd respondent, the 4th petitioner was directed not to construct the houses in the FTL area till further orders. Though the said proceedings dated 11.08.2007 are termed as a notice, 4th petitioner straightaway directed not to construct houses in the FTL area. Pursuant to the said notice dated 11.08.2007, the 4th petitioner submitted a reply. However, the said reply does not contain any acknowledgment whatsoever. Thereafter, after waiting almost for one year, the 2nd respondent again issued notice dated 19.07.2008 informing the 4th petitioner that as per the joint survey, construction of apartments in Sy.No.329, comes under FTL area of

Kothacheru, and he was directed to demolish the construction voluntarily within ten days. The said proceedings dated 19.07.2008 even though read as notice, the 4th petitioner was directed to demolish the constructions straightaway, without any show cause notice.

It is contended by the learned counsel for the petitioners that the proceedings dated 19.07.2008 were suspended and petitioners have completed the constructions and started living in the flats. Even though, impugned proceedings were suspended as long back as on 31.07.2008, no steps have been taken by the official respondents to file the counter-affidavit or vacate stay petition. Counter-affidavit has been filed by the 2nd respondent on 27.07.2018 after a period of ten years. As the impugned proceedings were suspended about ten years back on 31.07.2008, the counsel for the petitioners submits that they have proceeded with the construction.

In the facts and circumstances of the case, as the impugned order was passed directing the 4th petitioner to demolish the construction without any show cause notice whatsoever, impugned notice dated 19.07.2008 is set aside. However, the respondents are at liberty to issue notice, if need be and pass appropriate orders, in accordance with law.

The Writ Petition is, allowed, accordingly. No order as to costs. Miscellaneous petitions pending, if any, in this writ petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 26.10.2018
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