

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT**

W.P.No.21558 & 24868 OF 2017

COMMON ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Ashok Reddy Kanathala, learned counsel for writ petitioner; learned Government Pleader for Municipal Administration and Urban Development, Mr.Sampath Prabhakar Reddy, learned standing counsel for GHMC and Mr.K.Krishna Kishore for unofficial respondent.

The parties as arrayed in W.P.No.21558 of 2017 are referred to.

One Smt.S.Padma filed W.P.Nos.21558 & 24868 of 2017. The prayers in these two writ petitions read as follows:

W.P.No.21558 of 2017 is filed for Mandamus declaring proceedings dated 25.05.2017 in File No.109385/ACP/TPS/C-3/EZ/GHMC/2007/667 revoking BPS proceedings dated 25.11.2010 in File No.BPS/178/C3/EZ/GHMC/2008, as illegal, arbitrary, unconstitutional and violative of principles of natural justice.

W.P.No.24868 of 2017 is filed for challenging proceedings No.109385/ACP/TPS/C3/EZ/GHMC/2017/667 dated 13.07.2017 calling upon the petitioner to remove the unauthorized structures on Plot No.14, Western Part, House No.11-10-197/1, Road No.2, Vijayapuri Colony, Saroornagar, L.B.Nagar.

The circumstances relevant for disposal of these two cases can be noted from the affidavit filed in W.P.No.21558 of 2017. The petitioner purchased 146 sq. yards in Plot No.14, Western Part, House No.11-10-197/1, Road No.2, Vijayapuri Colony, Saroornagar, L.B.Nagar (for short 'the subject matter') through registered document No.736 of 1999 dated 05.11.1999. The 6th respondent is the owner of a plot on eastern side of subject matter. The petitioner claims to have applied to HUDA for building permission. The petitioner had undertaken the construction of building on deemed approval under the Hyderabad Municipal Corporation Act, 1955. The petitioner applied for regularization of unauthorized construction in terms of G.O.Ms.No.901 MA & UD (M1) Department dated 31.12.2007. The respondents issued proceedings No.BPS/178/C-3/EZ/GHMC/2008 dated 25.11.2010 regularizing unauthorized structures in the subject matter. The 6th respondent challenges the regularization proceedings by filing W.P.No.911 of 2008. On 22.11.2016, W.P.No.911 of 2008 was disposed of by calling upon the Chief City Planner to call for the regularization filed resulting in order dated 25.11.2010, hear both parties and pass appropriate orders. The 6th respondent filed W.A.No.139 of 2017 and a Division Bench of this Court directed the Chief City Planner to pass orders within two weeks from the date of receipt of a copy of the order therein. The said direction resulted in issuance of show cause notice dated 15.03.2017 under Section 450 of the Hyderabad Municipal Corporation Act, 1955. The petitioner claims to have submitted explanation on 28.03.2017 and 30.03.2017. The case of petitioner is that

ground plus two floors have been constructed under deemed approval and for the remainder construction, the petitioner has order of regularization. The construction can be regularized and there is no reason for recalling the regularization order dated 25.11.2010. The Chief City Planner, Town Planning issued proceedings dated 25.05.2017 impugned in the writ petition. The subject construction is without prior permission from GHMC; and in gross violation of G.O.Ms.No.423 M.A dated 31.07.1998; the subject work was carried out when the litigation is pending; and hence violative of Rule 6(ix) of G.O.Ms.No.901 M.A dated 31.12.2007. The 5th respondent refers to an order passed by this Court in W.A.No.139 of 2017 and recalls the regularization proceedings dated 25.11.2010.

Mr.Sampath Prabhakar Reddy has made available the original record of the proceedings impugned in the writ petition. After perusing the record, we are satisfied that the 5th respondent has not taken a holistic or comprehensive view in appreciating the circumstances which resulted in regularization proceedings dated 25.11.2010 and also that by referring to the order dated 02.02.2017 in W.A.No.139 of 2017, the impugned order dated 25.05.2017 is issued.

The examination of legality or otherwise of either regularization proceedings or the proceedings dated 25.05.2017 is at the instance of 6th respondent.

It is not disputed by the learned counsel appearing for GHMC and also 6th respondent/neighbour has also constructed a building which was

regularized by respondents 1 to 5. In other words, the construction undertaken by 6th respondent also suffered from violation of building regulations. Now, the argument of learned counsel appearing for 6th respondent is that the violation by 6th respondent is not as blatant as the construction undertaken by the petitioner.

We are merely referring to this contention but not expressing a view. However, we prefer to observe that the 6th respondent who has also committed breach of building regulations and got the deviation regularized, cannot set his approach in deviation as bench mark to be emulated by others and in deviation of such bench mark, to challenge the same in the Court of law. On this short ground alone, the writ petition at the instance of 6th respondent ought not to have been entertained.

Be that as it may, the petitioner challenges that the proceedings dated 25.05.2017 are substantially made by referring to the order dated 02.02.2017 in W.A.No.139 of 2017. According to petitioner, the direction issued by this Court in W.A.No.139 of 2017 has nothing to do with the construction made between 2006-2008 and the regularization obtained through proceedings dated 25.11.2010. This objection appears to be tenable and after perusing the proceedings dated 25.05.2017, we are also convinced that the 5th respondent was more persuaded by a direction issued by this Court for passing an order and passed order on the representation of 6th respondent. It is not the case of respondents 1 to 5 that the construction in existence in subject plot is over and above than what is regularized through

proceedings dated 25.11.2010. The procedure for regularization is detailed enough and once regularization order is issued, more particularly after verifying the plans and photographs given by an applicant, the proceedings dated 25.05.2017 recalling the regularization is unsustainable. Respondents 1 to 5, if wish to take action, ought to have applied a uniform yardstick both against writ petitioner and 6th respondent. The above observations of this Court ought not to be treated as a precedent or a ratio expressed by this Court on regularization of unauthorized and buildings constructed in deviation of sanctioned plan.

We are convinced, in the peculiar facts and circumstances of this case, the proceedings dated 25.05.2017 and the notice dated 13.07.2017 for the above reasons are unsustainable. Hence, are set aside.

The Writ petitions are allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

12th September, 2018
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