

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.781 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. 11006 of 2018 dated 5.6.2018. The appellant herein is the 4th respondent in the Writ Petition. The 1st respondent herein filed the said Writ Petition seeking a mandamus to declare the inaction of the Assistant City Planner, Greater Hyderabad Municipal Corporation (GHMC) in removing the illegal construction made by the appellant in the subject premises, in spite of receiving complaints and judgments passed by this Court in W.P. No. 15446 of 2011, as illegal and arbitrary.

In the order under appeal, the learned Single Judge observed that the appellant had raised construction in the property in 2011 causing the GHMC to issue a notice under Section 452(1) and 461(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as "the Act") on 28.3.2011 alleging that the appellant had constructed ground 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 5.4.2011 proposing to take action under Section 636 thereof; since no action was taken, the 1st respondent herein (writ petitioner) had filed W.P. No. 11779 of 2011 which was disposed of on 26.4.2011 asking the 2nd respondent to consider the petitioner's representations dated 20.1.2011 and 17.3.2011, and take further action after giving notice to the 4th respondent (appellant); claiming that an application under Section 455-A was filed on 25.6.2011, the appellant had approached this Court filing W.P. No. 15446 of 2011, which was disposed of by order dated 2.8.2011 holding that she ought not to have raised construction without obtaining the building

permission; there was no illegality in issuing the order under Section 455(2) of the Act, and though the Writ Petition should have been dismissed, in the light of the submission made by the appellant that she applied for regularization on 25.6.2011, the GHMC should consider it after giving notice to the 1st respondent-writ petitioner, calling for her objections, giving an opportunity of personal hearing to both the parties, and to decide the same in four months; and the appellant should not raise any further constructions, particularly on the rear side abutting the house of the 1st respondent-writ petitioner which had not been done by that date by the appellant, till a final decision was taken, on the application for regularization under Section 455 of the Act, by the Assistant City Planner.

In the order under appeal, the learned Single Judge observed that the photographs, filed by the 1st respondent herein, clearly showed that, inspite of the directions, the appellant had completed construction adjacent to the 1st respondent's property, and had thus wilfully and deliberately violated the Court orders; the submission that an application was made under Section 455-A on 25.6.2011 was false, since no such application was filed by the appellant or by the GHMC along with their counter affidavit; the appellant had made an application on 4.11.2011, 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 the appellant had misrepresented facts, and had filed a plan of the property to be dismantled; she had surreptitiously raised structures consisting of ground and first floor, without leaving the mandatory front spaces; and, therefore, there was no question of considering the application of the appellant for regularization under Section 455-A of the Act.

The learned Single Judge further observed that, but for the plea of the appellant that she had made an application under Section 455-A of the Act on 25.6.2011, the said Writ Petition would have been dismissed;

the appellant had played fraud on the Court and had stalled the inevitable demolition of the new structure found erected by her, by raising a false plea that she had made an application for regularization under Section 455-A; the appellant had not questioned the order dated 15.11.2011, rejecting her building permission application made on 4.11.2011; and refusal to consider her claim, under Section 455-A of the Act, had not been questioned by her.

The learned Single Judge observed that, though a notice under Section 636 of the Act was issued on 3.12.2011 asking the appellant to remove the unauthorized construction, of the ground and first floor, within three days, the appellant had approached the VI Junior Civil Judge, City Civil Court, Hyderabad, and had obtained an order of interim injunction against the Corporation on 27.1.2012; ultimately, the Suit was disposed of on 12.6.2015 granting perpetual injunction in favour of the appellant for residential purpose, if the old structure was existing and only repairs were carried out by the appellant over the property; and giving liberty to the GHMC to remove the new constructions, if any, made by the appellant by following due process of law; there was no impediment to the GHMC to remove the illegal constructions made by the appellant in 2011 after disposal of the Suit; the appellant's contention that she had made an application for regularization, in terms of GO Ms. No. 152 dated 2.11.2015 as per the building regularisation scheme notified on 30.11.2015, and the same is pending, could not be countenanced as once the appellant's application for regularization under Section 455 of the Act had been rejected on 15.11.2011, in the absence of any provision for reviewing the same, the question of considering the second application dated 30.11.2015 did not arise.

The learned Single Judge further observed that Clause 9(i) of GO Ms. No. 152 dated 2.11.2015 itself prohibited regularization of structures made where the sites are under legal litigation/disputes regarding ownership of the site/building exist; the contention that the said Clause

had no application was not tenable since the first portion of the clause prohibited regularization of unauthorized construction in “sites under legal litigation”; admittedly, such a litigation exists in the construction being made by the appellant; though the issue of title may not be involved, the category “sites under litigation” is a distinct and separate category from the category of “disputes regarding ownership of the site/building”; reliance placed by the appellant on the latter part was untenable, and 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 illegal construction made by the appellant in the said property.

The learned Single Judge then observed that permission had not been obtained for construction from the GHMC; the front set back was not adhered to by the appellant since a stair case was constructed in the front open space; that was why regularization under Section 455-A of the Act was rejected on 15.11.2011; the photographs showed that the appellant’s property was touching the wall of the 1st respondent-writ petitioner, and would interfere with the air circulation and light provision to the 1st respondent-writ petitioner’s property; and this was done by the appellant inspite of the injunction granted in W.P. No. 15446 of 2011 not to make any further construction. After taking note of all these facts, the learned Single Judge directed the GHMC, and the Assistant City Planner, to forthwith reject the appellant’s application for regularization made on 30.11.2015, then execute the order dated 5.4.2011 passed under Section 452(2) of the Act and the consequential orders passed under Section 636 of the Act on 3.12.2011 and 7.1.2012, and remove the unauthorized construction made on the ground and first floors of the premises within four weeks. The Writ Petition was allowed with costs of Rs.5,000/-.

Sri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the appellant, would submit that the learned Single Judge had misunderstood the scope of para 9(i) of the Scheme of regularization notified

in GO Ms. No. 152 dated 2.11.2015, and there are no disputes pending between the appellant and the 1st respondent, since both the earlier Writ Petitions and the Civil Suit had been disposed of; the learned Single Judge failed to notice that the legal litigation, referred to in para 9(i), is regarding the site, and disputes regarding ownership of the site and building; this dispute cannot be extended to unauthorized construction, since that is the very purpose for which the Scheme of regularization has been provided; and the order under appeal necessitates being set aside.

Sri N. Prashant, learned counsel for the 1st respondent-writ petitioner, would take us through various orders, passed by Courts from time to time, in great detail to submit that the appellant had played fraud on the Court, and had, from time to time, mis-represented facts before various Courts; she had surreptitiously obtained interim orders preventing the GHMC from taking action pursuant to the notice issued under Section 636 of the Act; no indulgence is, therefore, called for; and the order of the learned Single Judge does not necessitate interference.

The appellant had earlier filed W.P. No. 15446 of 2011 to declare the action of the GHMC in interfering with her rights in the subject property as arbitrary and illegal. The said Writ Petition was dismissed by order dated 2.8.2011 holding that the appellant ought not to have raised construction without obtaining building permission; and even though she pleaded that she had appeared before the GHMC on 2.4.2011, the fact remained that she had failed to submit her explanation to the notice dated 28.3.2011. While observing that the Writ Petition would have been dismissed with the said conclusion, the learned Single Judge noted the claim of the appellant that she had submitted an application for regularization of the building on 25.6.2011; and, therefore, directed the appellant to comply with the requirements of Section 455-A of the Act within a period of one month. The GHMC was directed to consider the application for regularization strictly in terms of Section 455-A of the Act, after giving notice to the 1st respondent-writ petitioner and calling for her

objections. On its notice being brought to the fact that, even though the construction of the building by the appellant was completed on the front side, the construction was incomplete on the rear side abutting the house of the 1st respondent-writ petitioner, the learned Single Judge had directed that, till a decision was taken by the GHMC, the appellant should not be permitted to raise any further construction. The fact however remains that, despite the specific direction of the learned Single Judge in W.P. No. 15446 of 2011 dated 2.8.2011, the appellant proceeded with construction on the rear side, and completed construction. She had raised pillars on the compound wall of the 1st respondent-writ petitioner having encroached, upto an extent of six inches into the land of the 1st respondent-writ petitioner plus 2½ feet below the basement.

The appellant not only violated the order passed by this Court in W.P. No.15446 of 2011 dated 02.08.2011, she later filed O.S. No. 191 of 2012 before the VI Junior Civil Judge, City Civil Court, Hyderabad seeking perpetual injunction restraining the GHMC, and the 1st respondent-writ petitioner, from interfering in any manner, or in demolishing any part of the suit property either in whole or in part. The plaint in O.S. No. 191 of 2012, admittedly, contains false averments. In the said plaint, the appellant stated that, since the property became old and had developed cracks here and there, it had become necessary for her to make repairs to the same; for this purpose, she had visited the concerned Circle Office for obtaining permission for making repairs; on being informed by the officials that no permission was required to make repairs, she had made repairs, such as removing the old plastering, flooring and white washing to the existing structure, in order to strengthen the suit property and to give it a good shape; the structures, in the suit property, were well within the boundaries of the suit property, and there was no encroachment on any side; the structures, in the suit

property, were neither causing any inconvenience nor posing any kind of danger to the neighbours.

In the aforesaid plaint, the appellant had suppressed the material fact of her having filed W.P. No. 15446 of 2011; and that this Court, by its order dated 2.8.2011, had directed her not to raise any further construction on the rear side till a decision was taken by the GHMC. Based on this false plaint, the appellant initially obtained interim injunction. The suit was eventually disposed of by order dated 12.6.2015, restraining the respondents from interfering with the property of the appellant, if the old structure was in existence and only repairs were being carried out by her over the suit schedule property. The learned VI Junior Civil Judge made it clear that, if the GHMC finds any new construction over the suit property, they were then at liberty to proceed against the appellant's new construction by following due process of law.

Yet another deliberate falsehood by the appellant was in informing the learned Single Judge, during the hearing of W.P. No. 15446 of 2011, that she had made an application for regularization on 25.6.2011. While fairly stating that a copy of the said regularization application dated 25.6.2011 was not filed before the learned Single Judge, Sri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the appellant, would place before us a copy of the regularization application dated 25.6.2011, and would contend that it contains the endorsement of the officials of the GHMC. The fact however remains that, by her application dated 4.11.2011, the appellant sought permission for construction of a building under Sections 428 and 433 of the GHMC Act. The letter dated 4.11.2011 is neither a request for regularization nor does it make any reference to any earlier application for regularization having been made by the appellant on 25.6.2011. If, really, an application had been made on 25.06.2011 seeking regularization of the unauthorized construction, there was no need for the appellant to make an application on

04.11.2011 for grant of permission to raise construction. It is also evident from the letter of the GHMC dated 15.11.2011, rejecting the appellant's request for grant of permission, that she had not even submitted the plan as per the site position, wherein she had dismantled the earlier construction; she had raised construction without leaving the required open space, and had raised a stair case in the front open space; she had mis-represented facts by showing the front set backs, whereas the existing structure on the site did not have any; and, therefore, the question of regularization under Section 455-A of the Act, as per the High Court orders, did not arise. The appellant was directed by the GHMC to remove the unauthorized construction.

While the GHMC was aware of the order passed by this Court in W.P. No.15446 of 2011, dated 2.8.2011, and reference in its order dated 15.11.2011, to Section 455-A of the Act, is in the context of the aforesaid order passed by this Court, even this letter of rejection dated 15.11.2011 makes no mention of the appellant having submitted an application for regularization on 25.6.2011. It does not seem as if the appellant had made any application for regularization on 25.6.2011 as claimed by her.

While the aforesaid acts of suppression and misrepresentation of relevant and material facts by the appellant before various Courts and authorities, would justify dismissal of the appeal, since all that the learned Single Judge has directed is for the GHMC to act in accordance with law, and to take action pursuant to the notice issued by them earlier, Sri S. Niranjan Reddy, learned Senior Counsel appearing for the appellant, would submit that the appellant is a poor widow, who had no other property except this building constructed on 100 square yards of land; she is willing to make reparations for her earlier violations, and this Court may give her one more opportunity to purge herself of her earlier acts of having raised construction un-authorizedly in violation of the order passed by this Court in W.P. No. 15446 of 2011 dated 2.8.2011.

In her affidavit dated 12.6.2018, undertaking to make reparations, the appellant stated that, as per the building rules, she is obligated to leave a mandatory front set back of 1.5 mtrs and, by violating the same, she had constructed a stair case leaving no set back; she undertook to remove the stair case to an extent of 5 feet to bring it in accordance with rules; as per the building rules in GO Ms No. 86 of 2006 and GO Ms. No. 168 of 2012, no rear set backs are required to be maintained, while making construction in a property less than 100 mtrs; the grievance of the 1st respondent-writ petitioner was that the appellant had constructed pillars on the walls abutting the common wall on the Southern side belonging to her; the appellant undertook to remove the wall on the first floor constructed abutting the common wall on the Southern side, and to construct a fresh wall leaving 2 feet set back on the first floor; and the appellant be permitted to retain the pillars as the building would collapse if the pillars were removed. She further stated that the civil construction, relating to structures including on the Southern side were completed substantially including slabs and pillars which were already existing by then; and civil works, relating to the internal walls was in progress, for completion and plastering as on the date of filing of W.P. No. 15446 of 2011. She undertook to pay appropriate costs to be imposed by the Court for the unauthorized construction, and her previous wrongful conduct, including for acting in violation of the orders of this Court.

While we were inclined, initially, to show some indulgence to the appellant as she is a widow and a senior citizen, a perusal of the photographs, filed along with WVMP No. 2710 of 2011 in W.P. No. 15446 of 2011 dated 14.7.2011, show that outer walls to a certain extent had been erected on pillars on the rear side of the building; and no construction had been made on the rear side of the first floor. In her affidavit dated 12.6.2018, which was filed seeking to make reparations for her earlier acts of having violated the orders of this Court, and for

having filed false affidavits and a false plaint, the appellant has again mis-represented facts stating that structures on the Southern side were completed substantially, including slabs and pillars, which were already existing by then; and civil works, relating to internal walls were in progress for completion and plastering as on the date of filing of W.P. No. 15446 of 2011.

The aforesaid averments, in the affidavit dated 12.06.2018, are evidently false, since the photographs filed along with the vacate stay petition in W.P. No.15446 of 2011 show that, even the outer walls were only partly constructed in the ground floor, and no outer walls were raised on the first floor by then. Since the appellant has been resorting to falsehood at every stage, including in the affidavit filed by her before us on 12.6.2018, we see no reason, whatsoever, to show her indulgence.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

25th June, 2018

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