

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.22421 of 2017

ORDER:

Sri Raja Gopallavan Tayi, advocate, represented that in the place of earlier advocate Sri D.G. Naidu and Sri S.Madan Mohan, he filed vakalat for the petitioner before the Registry. Hence, Registry to verify and print his name in the place of Sri D.G. Naidu and Sri S.Madan Mohan, if any such vakalat filed with no objection.

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration for respondent No.1 and Sri Sampath Prabhakar Reddy, learned Standing Counsel for respondent Nos.2 to 5 and perused the prayer in the writ petition with the supporting affidavit and the impugned rejection order dated 20.01.2017 of the 5th respondent on behalf of the 2nd respondent.

It is the supporting affidavit averment of the writ petitioner that he purchased plot No.185 admeasuring 516 sq. yards under registered sale deed document No.2326 of 1994 dated 19.03.1994 from Bhagyanagar Cooperative Housing Society Limited (for short 'Bhagyanagar Society') and made application to GHMC under Layout Regularization Scheme of G.O.Ms.No.902, MA, dated 31.12.2007 and G.O.Ms.No.113, MA, dated 31.01.2008 having paid necessary charges for regularization and by proceedings No.LRS/9326/CR-14/WZ/GHMC/2008 of GHMC dated 04.05.2009, regularized the plot No.185 and he constructed compound wall and a room with asbestos sheet roof therein. He made building application dated 09.09.2016 to the Deputy

Commissioner, Circle 14 (Kukatpally), GHMC-4th respondent for construction of building in the said plot No.185 by payment of necessary fee and by enclosing necessary documents and he received letter dated 20.01.2017 (subject matter of impugment in the writ petition) from the 4th respondent stating proposal for construction of residential building in plot No.185 in S.No.1007 of Kukatpally, rejected on the ground of there are multiple cases in High Court are pending and plans submitted by the application thereby returned unapproved without sanction.

It is the writ petition affidavit averment that the vendor of Bhagyanagar society covered by registered contract dated 15.09.1974 of Ac.50.00 gts. in S.No.1007 of Kukatpally by name Mir Fazeelath Hussain having received entire consideration from society and delivered possession to the society thereto by 25.11.1980, failed to execute sale deed and thereby the society filed O.S.No.152 of 1984 and there was a decree and judgment in favour of the society on 25.04.1984 and E.P.No.43 of 1991 for execution of the sale deed filed and registered sale deed No.8985/1992 dated 27.12.1991 executed through Court in favour of the society and it is subsequently the layout approval was made. It is further averred that one Mohd. Kazim Ali Khan filed O.S.No.3306 of 1984 for dissolution of partnership firm and redemption of accounts and there was a preliminary decree dated 27.09.2000 dissolving the firm and pursuant to the preliminary decree which no way include survey No.1007 of Kukatpally supra, final decree proceedings in I.A.No.1108 of 2006 surprisingly included of survey No.1007 under the guise of unregistered GPA obtained by said firm bearing No.3306/1984 and there was a

commissioner appointed in the final decree proceedings and questioning their right, M/s. Prima Properties filed I.A.No.811 of 2004 in I.A.No.1106 of 2001 in O.S.No.3306 of 1994 with a claim and the same was dismissed by order dated 22.11.2004, which is subject matter of CRP.No.6697 of 2004 by Prime Properties and the High Court set aside the dismissal order passed in I.A.No.811 of 2004 with a direction that the property to be released from the custody of the receiver to the original owner. Aggrieved thereby, Mohd. Kazim Ali Khan filed SLP.No.11595 of 2009 and one Mirza Yousuf Ali Baig filed another SLP.No.18163 of 2010 and Bhagyanagar society filed implead applications before the Supreme Court therein and also filed Special Leave to Appeal (Civil)(CC.No.3785 of 2012) that was disposed of by the Supreme Court by order dated 02.03.2012 directing Bhagyanagar society to seek review of the order dated 20.03.2009 in CRP.No.6697 of 2004 and the Apex Court allowed the petitioners in SLP.Nos.11595 of 2009 and 18163 of 2010 permitting to withdraw the same by order dated 10.01.2017 with observation that however rights of any other parties and interveners if they are affected in any manner are at liberty to take appropriate steps under the relevant positions of law before the appropriate forum. Bhagyanagar society or the petitioner Mallikarjuna Durga Vara Prasad, were not parties to C.C.No.3785 of 2012 before the Supreme Court. It is therefrom averred further in the writ petition that practically there is no any title dispute and rejection of the plan applied for the construction of the building as if there are several civil litigations is unsustainable.

The learned Standing Counsel supports the order impugned herein. However, a perusal of the order no way referred what are the civil litigations affected the rights of the petitioner or their vendor Bhagyanagar society to reject the building plan sought for in question.

Having regard to the above, the impugned order is cryptic and unsustainable in view of the factual matrix supra thereby set aside with a direction to reconsider by passing reasoned order referring to the litigation if at all by obtaining proper legal opinion if required for passing such order preferably within four (4) weeks from the date of receipt of this order.

Accordingly and in the result, the Writ Petition is allowed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 06.03.2018
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JUSTICE Dr. B.SIVA SANKARA RAO

