

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.1438 of 2018

ORDER:

Heard Smt. Dr.Sofia Begum, learned counsel for the petitioner and Sri L.Venkateswara Rao, learned Standing Counsel for Greater Hyderabad Municipal Corporation (for short “GHMC”), appearing for the respondents.

2. Petitioner has filed this Contempt Case alleging willful disobedience by the respondents of the order dt.03-04-2018 in I.A.No.1 of 2017 (W.P.M.P.No.53621 of 2017) in W.P.No.43254 of 2017 passed by this Court.

BACKGROUND FACTS

3. Petitioner claims to be absolute owner and possessor of the land admeasuring 384 sq yds in Block-E, Ward No.7, Near Babu Nagar, S.R.Nagar, Yousufguda, Khairatabad, Hyderabad, having purchased the same from its lawful owners Smt. Suneeta Devi and others through their General Power of Attorney Holder V.Ravi Kumar under registered sale deed being doc. No.1416/2010 dt.21-07-2010. He contends that ever since purchased of the land, he has been in physical possession and enjoyment of the property without any interruption or interference by anybody else.

4. Petitioner contends that he intended to proceed with the construction of the property and approached the GHMC for grant of permission, but he did not grant permission for construction on the ground that the petitioner should get NOC from the office of the District Collector, Hyderabad District. Petitioner then filed W.P.No.32299 of 2010 which was allowed by this Court directing GHMC to permit the petitioner to construct the building without insisting NOC from the District Collector, Hyderabad.

5. Subsequent thereto, the Telangana Housing Board claimed right, title or interest over this property forcing the petitioner to file O.S.No.3681 of 2010 before the V Junior Civil Judge, City Civil Court, Hyderabad, for the relief of perpetual injunction. Initially, there was interim injunction granted in I.A.No.863 of 2010 in petitioner's favor restraining the Telangana Housing Board from interfering with the peaceful possession and enjoyment of the petitioner and ultimately the suit itself came to be decreed on 20-04-2012; and a finding was given therein that the petitioner was in possession and enjoyment of the suit schedule property; and the Telangana Housing Board is restrained by way of permanent injunction from interfering with the possession and enjoyment of the petitioner and his co-vendor over the above property.

6. During the pendency of the suit, the Telangana Housing Board in collusion with the police of S.R.Nagar Police Station, interfered with the possession and enjoyment of the petitioner.

Petitioner then filed W.P.No.32918 of 2010 and obtained interim orders on 18-01-2011 in W.P.M.P.No.11058 of 2010 restraining the police from interfering with petitioner's possession over the subject land.

7. Thereafter, when the District Collector, Hyderabad, did not issue NOC to the petitioner for submitting to the GHMC for building permission, petitioner filed W.P.No.22889 of 2014 and sought a direction to the District Collector, Hyderabad to issue NOC in respect of the subject property. Such NOC was then issued by the District Collector vide proceedings No.1886/2014 dt.26-03-2015.

8. Petitioner contends that thereafter, the District Collector, Hyderabad issued proceedings on 11-08-2015, served on the petitioner on 08-01-2016, cancelling the NOC issued to the petitioner on 26-03-2015 without any prior notice.

9. Petitioner questioned the same in W.P.No.2667 of 2016 contending that the District Collector, Hyderabad is not vested his power to review his proceedings and the said order dt.11-08-2015 was suspended until further orders by order dt.29-01-2016 in W.P.M.P.No.3349 of 2016.

10. Petitioner contended that he submitted an application online to the GHMC on 26-09-2017 by paying Rs.10,000/- for grant of building permission and when no action was taken, a written

representation was also made on 28-10-2017 and thereafter, GHMC issued order dt.30-11-2017 rejecting grant of building permission.

W.P.No.43254 of 2017

11. Petitioner therefore filed W.P.No.43254 of 2017, out of which this Contempt Case arises, challenging the said order dt.30-11-2017 passed by the GHMC. He contended that the said order refers to Telangana Housing Board filing A.S.S.R.No.19308 of 2013 along with I.A.Nos.4243, 4343 and 2787 of 2015; that petitioner verified and came to know that the Appeal ASSR No.19308 of 2013 filed by the Telangana Housing Board was not represented in time; that the Telangana Housing Board then filed I.A.No.2787 of 2015 for condoning the delay in representing the appeal; and the said I.A. was dismissed for default on 04-01-2017, but the Telangana Housing Board did not take any steps. He contended that later it filed I.A.No.4343 of 2017 for condonation of delay in 162 days in filing petition to restore I.A.No.2787 of 2015 which is still pending and therefore the order dt.30-11-2017 of the GHMC is liable to be set aside.

ORDER dt.03-04-2018 in I.A.No.1 of 2017 in W.P.No.43254 of 2017

12. At the stage of admission, on 03-04-2018, in I.A.No.1 of 2017 in W.P.No.43254 of 2017, this Court recorded that the decree and judgment dt.20-04-2012 in O.S.No.3681 of 2010 obtained by the petitioner against the Telangana Housing Board had not been

suspended in the appeal filed by the said Telangana Housing Board till date; in the said judgment, there is a finding recorded that the subject land is retainable land under the provisions of Urban Land (Ceiling and Regulation) Land Act, 1976, and that proceedings dt.16-02-2006 were issued by the Special Officer and Competent Authority, Urban Land Ceiling, certifying that the subject land is not surplus land; that therefore the Telangana Housing Board cannot raise any dispute about title of the petitioner over the subject property; and at the instance of the said Telangana Housing Board, GHMC cannot reject the building permission sought by the petitioner by passing the order dt.30-11-2017. It therefore granted interim suspension of the order dt.30-11-2017 and *directed GHMC to reconsider petitioner's building permission application within four weeks.*

13. Alleging that the above interim order was not obeyed by the GHMC, that proceedings dt.02-06-2018 had been issued by the GHMC refusing to consider petitioner's building permission application on the ground that it had dispensed with the manual process of granting building permission and was only accepting online applications and directing the petitioner to file online application, the present Contempt Case has been filed. It is contended in the CC that this is willful disobedience of the order dt.03-04-2018 passed in I.A.No.1 of 2017 in W.P.No.43254 of 2017.

14. It is also contended that the Assistant City Planner of GHMC who was not a party in W.P.No.43254 of 2017 is intentionally

harassing the petitioner and not respecting the order passed by the Court and both the respondents should be punished for contempt. Leave was granted in I.A.No.1 of 2018 in C.C.No.1438 of 2018 to implead the 2nd respondent as party-respondent in the Contempt Case.

THE PROCEEDINGS IN THIS C.C.

15. Notice before admission was ordered in the Contempt Case on 13-07-2018. Sri L.Venkateswara Rao, learned counsel appeared for the respondents and sought time to file counter.

16. He contended that the respondents had complied with the order passed by this Court by issuing the proceedings dt.02-06-2018 to the petitioner. He also contended that the 2nd respondent had subsequently considered petitioner's building permission application and issued proceedings dt.16-08-2018 directing him to remit Rs.33,80,139/- subject to several conditions one of which read "*4. as the GHMC had given the land on lease, the applicant has to construct compound wall duly maintaining the proposed 30 mts Master Plan road on eastern side*".

17. Since admittedly the subject land was never leased by GHMC to the petitioner, the Court strongly objected to the above condition and also questioned the respondents how they arrived Rs.33,80,139/- as the amount payable by petitioner for securing building permission since no break-up of the fee/charges was

indicated therein. It therefore admitted the Contempt Case and issued notice in Form-I to 2nd respondent on 24-08-2018.

COUNTER OF 2nd RESPONDENT

18. Thereafter the 2nd respondent filed a counter affidavit denying that there is any disobedience of the order passed by this Court. After referring to its earlier order dt.02-06-2018, the 2nd respondent mentioned that petitioner submitted an application in online mode to the GHMC on 05-06-2018 and also filed copy of the said application of the petitioner (pages 32 to 33). It is contended that the GHMC processed it, informed the petitioner of some shortfalls in the application unrelated to the ownership aspect which he complied by resubmitting his application on 02-07-2018. It is contended that when that application of petitioner is under active consideration, petitioner, without any valid justification filed this Contempt Case on an apprehension that the GHMC may reject his application.

19. It is stated that on 16-08-2018, the GHMC sent a fee intimation letter asking the petitioner to pay Rs.33,80,139/- subject to certain conditions; but later it was discovered that some conditions mentioned therein are not applicable to petitioner's plot at all; and so issued a fresh fee intimation letter to petitioner on 07-09-2018 deleting the inapplicable conditions.

20. He justified levy of such large sum of money stating that building permission for petitioner's plot can be considered only in terms of G.O.Ms.No.151, MA & UD dt.02-11-2015 which provides for regularization of unapproved and illegal layouts; that the Telangana Regularization of unapproved and illegal Layout Rules, 2015 framed in the said G.O. apply to all existing unapproved subdivision of plots, existing unapproved layouts or ventures promoted by land owners/private developers/firms/ Companies/property Developers/Societies where the plots have been sold by registered sale deed on or before 28-10-2015; that the Rules apply to areas which have clearance even under the Urban Land (Ceiling and Regulation) Act, 1976; that a letter had been issued by the Secretary, Municipal Administration and Urban Development (M.I) Department, Government of Telangana stating that building permission may be considered in respect of those plots that were not sought to be regularized under the Layout Regularization Scheme, 2015 on payment of basic penalization charges as per the said scheme, and 33% compounding fee + open space contribution charges at 14% on the present market value of the plot; and since petitioner's plot did not form part of an approved layout, Rs.33,80,139/- was demanded from the petitioner inclusive of building permission fee, betterment charges, vacant land tax, rainwater harvesting charges in addition to open space contribution charges and layout regularization charges as per the following calculation:

S.No.	DESCRIPTION	Rs.
01.	Building Permit Fee :	
	(i) Proposed covered built-up area (residential) 360 Sq.Mtrs. @ Rs.50 per Sq.Mtrs.	18,000/-
	(ii) Proposed compound wall R.M.T. 127.07 @ Rs.20 per R.M.T.	2,541/-
	(iii) Advertisement & Postage charges	100/-
02.	Betterment Charges (G.O.Ms.No.223 MA, dt.30.08.2016)	
	(i) Proposed on built-up area 360 Sq.mtrs @ Rs.125/- per sq.mtrs.	45,000/-
	(ii) On open area excluding coverage 160.25 Sq.mtrs. @ Rs.125 per Sq.mtrs.	20,031/-
03.	Betterment Charges & External Betterment Charges (on built-up area in Sq.mtrs.)	
	(i) Proposed on built up area for 360 Sq.mtrs @ Rs.100/- per sq.mtrs.	36,000/-
04.	Vacant Land Tax Plot area in Sq.yard x 0.5 % x Market Value	
	(a) 330 x 0.5 % x 65,000/- = 1,07,250/-	
	(b) 107250 x 8% = 8,580/-	
	Total (a) + (b)	1,15,830/-
05.	Rain Water Harvesting Charges Proposed Net Built up area 360 x 8	2,880/-
01.	Open Space Contribution Charges In case of unauthorized layout sub-division cost of 14% on total plot area Total plot area 330 Sq.Yards x 0.14 x Registration rate of the plot i.e., Rs.65,000 per Sq.Yards.	30,03,000/-
02.	Compounding Fee / Layout Regularization charges In case of unauthorized layout sub-division Basic Regularization charges x Regularization charges (Basic Regularization charges) x plot area	
	(a) 400 x 100% x 275.86 Sq.mtrs. = Rs.1,10,344/-	
	(b) Rs.1,10,344/- x 33% = Rs.36,413/-	
		1,46,757/-
	TOTAL (a) + (b)	=====
	GRAND TOTAL..... =	Rs.33,90,139/- =====

CONSIDERATION BY THE COURT

21. Learned counsel for the petitioner contended that petitioner is not liable to pay the open space contribution charges of Rs.30,03,000/- or Layout Regularization Charges of Rs.1,46,757/- to the GHMC and the 2nd respondent had deliberately included the same though G.O.Ms.No.151, MA & UD Department dt.02-11-2015 framing the Telangana Regularization of Unapproved and Illegal Layout Rules, 2015 do not apply to the petitioner's plot at all only because the petitioner approached the Court complaining about the illegal actions of the GHMC. Learned counsel for petitioner relied upon Lr.No.E/107 to 112/76 dt.19-05-2010 issued by the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad and also proceedings No.E2/107 to 112/76 dt.16-02-2006 of the said Authority specifically referring to the subject land as part of ancestral properties of the petitioner's vendor's family and certifying that they are not holders of surplus vacant land under the Urban Land (Ceiling and Regulation) Act, 1976. It is also contended that the very demand is malafide and only made to harass the petitioner and ensure that he does not make any construction in the subject land.

22. Learned counsel for GHMC refuted these contentions.

23. Since he was relying on G.O.Ms.No.151 MA & UD Department dt.02-11-2015, I shall first consider whether it is applicable or not to the plot of the petitioner.

24. The said G.O. lays down the Telangana Regularization of Unapproved and Illegal Layout Rules, 2015 w.e.f. 28-10-2015 and makes the said Rules applicable to Municipal Corporations etc. in the State of Telangana; and to existing unapproved sub-division of plots, existing unapproved layouts or ventures promoted by land owners/private developers/ firms/companies/ property developers/Societies where plots have been sold by registered sale deed on or before 28-10-2015.

25. Rule 3(a) defines the term “*unapproved/illegal layout*” as *sub-division of land into plots with or without developed roads, open spaces and amenities and without the approval of the competent authority*.

26. Thus for the said Rules to apply, the GHMC must show that there was a sub-division of land into plots with or without developed roads, open spaces and amenities and without the approval of the competent authority and the subject plot was one such plot carved out by sub-dividing a large parcel of land. No material is filed by the GHMC in support of its stand.

27. On the contrary, the proceedings No.E2/107 to 112/76 dt.16-02-2006 of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad under Section 8(4) of the Act filed by the petitioner in relation to declaration filed by the family of the petitioner’s vendor Sunitha Devi and others indicates that the subject

land along with other lands were considered to be *ancestral properties* of the family and that this is also reiterated in Lr.No.E/107 to 112/76 dt.19-05-2010 of the said Authority. This indicates that the subject land is part of the land held to be non-surplus by the said Authority under the Urban Land (Ceiling and Regulation) Act, 1976. and the subject land was never a plot which was created by subdivision of the vendors properties into plots at any point of time. It was only a portion of non-surplus ancestral property of the owner's family. So, G.O.Ms.No.151 Municipal Administration and Urban Development Department dt.02-11-2015 is inapplicable to the plot of the petitioner. It is obvious that it was applied by 2nd respondent just because the petitioner had complained of inaction of the GHMC in granting permission to him to make construction in the subject land and dragged the GHMC to Court.

28. In fact when this Court on 03-04-2018 in I.A.No.1 of 2017 in W.P.No.43254 of 2017 directed the respondents to reconsider petitioner's building permission application dt.29-08-2017 *made online* within four weeks, and the said order was passed after hearing the counsel for GHMC, the 2nd respondent ought to have complied with it within the said time, but initially outright rejected it on 02-06-2018 on the pretext that he had not filed it online. This reason is false because along with his counter, the 2nd respondent himself filed from pages 28 to 31, the petitioner's online application dt.29-08-2017.

29. Thereafter referring to the very same online application, the 2nd respondent issued proceedings on 16-08-2018 mentioning in condition-4 that the GHMC had given the land on lease to petitioner and he should be construct the compound wall by maintaining proposed 30 mt Master Plan road on the eastern side. This also shows that the 2nd respondent deliberately introduced condition like the above one in the building permission which has no application to the petitioner.

30. Also, the said proceedings gave no break up of the sum of Rs.33,80,139/- demanded from the petitioner. This demand is also reiterated in the proceedings dt.07-09-2018 issued by the 2nd respondent without giving any breakup. This also indicates the arbitrary action of the 2nd respondent.

31. Only after the Court asked him to explain this demand, the 2nd respondent explained it though an annexure filed to his counter indicating that Rs.30,03,000/- is towards open space contribution charges (treating petitioner's plot as unauthorized layout sub-division) and also levying Rs.1,46,757/- towards compounding fee/Layout Regularization charge and justified it in the counter referring to G.O.Ms.No.51 dt.02-11-2015.

32. As already held by me earlier, the GHMC cannot demand Rs.30,03,000/- towards open space contribution charges and Rs.1,46,757/- towards compounding fee/layout regularization charges

out of Rs.33,90,139/- demanded by it. Therefore after deleting the same, petitioner is only liable to pay only Rs.2,30,382/- to the GHMC for the building permission granted to him in addition to Rs.10,000/- which he already paid.

33. Thus at every stage it is clear that the 2nd respondent behaved in a malafide, arbitrary and illegal manner and deliberately wanted to make the petitioner pay amounts to GHMC which he was not bound to pay in law to punish petitioner for approaching the Court complaining about its inaction.

34. In my opinion, this amounts to deliberate and willful disobedience by the 2nd respondent of the order dt.03-04-2018 in I.A.No.1 of 2017 in W.P.No.43254 of 2017.

35. In **Delhi Development Authority Vs. Skipper Construction Company Private Limited¹**, the Supreme Court held that power conferred on this Court under Article 215 of the Constitution of India to punish contemnors necessarily includes all powers incidental and consequent to such power and the Court is entitled to give appropriate directions for remedying and rectifying things done in violation of its orders.

36. Therefore, the Contempt Case is allowed; the 2nd respondent is sentenced to imprisonment of four (04) weeks and fine of Rs.2,000/- (Rupees Two Thousand only) for willful disobedience

¹ (1996) 4 S.C.C. 622

of the order dt.03-04-2018 in I.A.No.1 of 2017 in W.P.No.43254 of 2017; the proceedings dt.16-08-2018 of the 2nd respondent insofar as it included the demand of Rs.30,03,000/- towards open space contribution charges and Rs.1,46,757/- towards compounding fee/layout regularization charges is set aside; and on the petitioner paying Rs.2,30,382/-, the petitioner shall be allowed to make construction pursuant to the permission contained therein; the sentence of imprisonment imposed on 2nd respondent is suspended for six weeks. The petitioner shall deposit subsistence allowance of Rs.300/- per day within a period of six weeks.

37. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-11-2018
Kvr/Vsv/*