

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21010 of 2018

ORDER:

Heard Sri P.Venugopal, learned Senior Counsel and Sri L.Venkateshwara Rao, learned Standing Counsel for respondent-Municipal Corporation.

A notice, bearing No.218/TPS/C18/GHMC/2018, dated 20.06.2018, under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act'), alleging that the petitioner, after obtaining building permission, commenced construction and constructed Cellar, Stilt + 3 upper floors with deviations to the sanctioned plan and also constructed unauthorized sub-cellar, 5th floor and pent house without prior permission from the respondent-Municipal Corporation, as required under Sections 428 and 433 of the Act is under challenge in this Writ Petition.

According to the petitioner, one G.Srinivas was the owner of the premises bearing Municipal Nos.8-2-293/82/A/218 & 8-2-293/82/A/218/A, forming plot No.218, Sy.No.403/1 (old) 120 (new) of Shaikpet village and 102/1 of Hakimpet village, admeasuring 1191 Sq.Yds., or 995.7 Sq.Mtres., and the said property is in approved layout. It is further stated that the said G.Srinivas obtained building permission vide permit No.156/22, dated 29.12.2017, for construction of sub-cellar, cellar + 3 upper floors and also obtained revised permit No.1/68, dated 07.07.2010. In the process of realization of Bank loan, the State Bank of India on "as is, where is and as is what is basis" conducted e-auction and the petitioner herein participated in the said auction and

emerged as the highest bidder and after payment of the entire amount, the State Bank of India registered the property vide document No.1993/2016. It is alleged in para 5 of the writ affidavit that G.Srinivas Rao, who lost his properties, developed grudge against the petitioner and made a complaint against the petitioner and on the basis of the same, the Deputy Commissioner/R.3 issued notice bearing No.218/TPS/CX/GHMC/2017, dated 28.02.2017, and the same reads as under:-

“Whereas, it is noticed that the erection/re-erection of the Building/execution of the works as detailed below have been unlawfully commenced/is being unlawfully carried by you upon premises bearing Plot No.218, situated at Road No.17, Jubilee Hills, Hyderabad. You are hereby directed to stop the said construction work forthwith as the same is carried on without seeking permission as required U/s.428/contrary to the sanction plan/contrary to the provisions contained in Sections 441, 442, 443, 444, 445, 446, 447 commenced after the expiry of the period of the one year specified in Sections 437 and 438 of the HMC Act, 1955.

You are hereby directed to submit ownership documents, registered sale-deed copies, sanctioned plan copy and relevant documents if any for verification within (3) days.

Take notice that if the said work is not stopped forthwith, such steps as may be necessary to stop the said work shall be taken including the removal of yourself and agent with the help of Police from the said premises and prevent your entry upon the said premises. The costs any measure taken as above shall have to be paid by you.”

Thereafter, the Deputy Commissioner/R.3 issued the notice bearing No.218/TPS/C10B/CZ/GHMC/2017, dated 12.04.2017, saying that the permission granted earlier got lapsed and advised to obtain permission afresh. For the aforesaid notice, according to the petitioner, he submitted a reply. Thereafter, the petitioner herein also filed O.S.No.2271 of 2017 before the Court of the IV-Additional Junior Civil Judge, City Civil Court, Hyderabad, and in I.A.No.702 of 2017, interim injunction was granted on 19.10.2017 and on 15.06.2018, the same was vacated and according to the learned Counsel, the petitioner herein had withdrawn the said suit.

Reiterating the counter affidavit filed by the respondent-Municipal Corporation, it is submitted by the learned Standing Counsel that the previous owner – G.Srinivas Rao filed an application 2000108552, dated 31.01.2016 under BRS scheme and by way of an Order, dated 13.06.2018, the respondent-Municipal Corporation rejected the same and no appeal has been filed and the same has become final.

When the matter is taken up, it is submitted by the learned Senior Counsel Sri P.Venugopal that the petitioner herein was not aware of the said rejection order and came to know of the same after filing the counter in the present Writ Petition. It is also submitted by the learned Senior Counsel that the petitioner herein may be permitted to file an appeal against the said order of rejection under Rule 11 of the Rules called 'Telangana Regularization of unauthorizedly constructed buildings and buildings constructed in deviation of the sanctioned plan Rules, 2015 (hereinafter, referred to as 'the Rules'), notified vide G.O.Ms.No.152, Municipal Administration & Urban Development

(M1) Department, dated 02.11.2015. Rule 11 of the said Rules deals with *appeal* and according to the same, any applicant aggrieved by an order passed by the Competent Authority under Rule 6, may prefer an appeal to the Committee constituted by the Government within thirty days from the date of receipt of the order provided the applicant has paid the necessary charges and submitted documents, as specified in Rules 3 and 5 of these Rules.

It is further submitted by the learned Senior Counsel that since the respondent-Municipal Corporation rejected the applications filed by his vendor, the petitioner herein is entitled to file an appeal against the order of rejection.

Having heard the learned Senior Counsel and the learned Standing Counsel and as the application filed by the petitioner's vendor is rejected by way of Order, dated 13.06.2018, and as the petitioner herein came to know of the same only after filing the counter affidavit, this Court deems it appropriate to dispose of the Writ Petition, keeping it open for the petitioner herein to file an appeal against the Order of rejection of the BRS application passed by the respondent-Municipal Corporation, on 13.06.2018, within a period of two weeks from the date of receipt of a copy of this Order. If any such appeal is filed, the same be considered and appropriate orders be passed, strictly in accordance with law. Pending such exercise, *status quo*, as on today, with regard to the subject constructions, shall be maintained. It is further made clear that the petitioner shall not make any further constructions in the subject premises.

Miscellaneous Petitions pending consideration, if any, in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE A.V.SESHA SAI

Date :04.09.2018
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