

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.4580 and 21707 of 2018

COMMON ORDER:

Since the petitioner in these two writ petitions is the same and the basic cause which compelled the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India is the same, this Court deems it appropriate and apposite to dispose of these two writ petitions by way of this common order.

2. In W.P.No.4580 of 2018, challenge is to the notice bearing UC/W/Mp/1-4/Gir-20/TPS/GHMC/2018, dated 08.02.2018, issued by the Zonal Commissioner, West Zone/third respondent herein under Section 636 of Greater Hyderabad Municipal Corporation Act, 1955 (hereinafter called 'the Act').

3. The sum and substance of the pleadings in the affidavit filed in support of W.P.No.4580 of 2018 is that without serving notices in advance under Section 452 (1) and (2) of the Act, the third respondent Zonal Commissioner issued the impugned notice dated 08.02.2018 under Section 636 of the Act and affixed the said final notice on the compound wall.

4. W.P.No.4580 of 2018 came up before this Court for admission on 12.02.2017 and this Court passed the following order:

“Though petitioner challenges the notice dated 08-2-2018, learned counsel for petitioner fairly, submits that petitioner has already given an undertaking to remove the temporary shed constructed by him but could not complete the removal as per the undertaking and requested reasonable time to comply with the undertaking and remove the temporary shed. Learned counsel submits that if time is granted till 26-2-2018, he will report to the Court the action taken in compliance of the notice dated 08.02.2018.

Time is granted till 26.02.2018 to remove the temporary structure made against which notice dated 08.02.2018 is issued and report to the Court steps taken by petitioner to the satisfaction of GHMC.

List on 26-2-2018.”

5. On 20.02.2018, petitioner herein filed I.A.No.3/2018 under Section 148 of the Code of Civil Procedure praying for extension of time by six months to comply with the above said order dated 12.02.2018.

6. Coming to W.P.No.21707 of 2018, in this writ petition challenge is to the order of the Deputy Commissioner/Second respondent herein passed vide Proceedings No.796/TPS/G-20/WZ/GHMC/2018, dated 25.06.2018. By way of the said order, the Deputy Commissioner rejected the application of the petitioner dated 20.03.2018 for regularisation of unauthorised construction.

7. Heard Sri Vedula Venkataramana, learned Senior Counsel for the petitioner and Sri Sampath Prabhakar Reddy, learned Standing Counsel for the respondent Municipal Corporation apart from perusing the material available before the Court

8. Learned Senior Counsel for the petitioner attacks the impugned action, firstly, by contending that as per Section 455-A of the Act the competent authority to consider and take action on the application for regularisation is the Commissioner of the Corporation, but not the Deputy Commissioner, as such, the order of rejection is liable to be set aside on the ground of jurisdiction. It is further maintained by the learned Senior Counsel that before passing orders on the application, the Corporation should have informed the petitioner the quantum of amount payable towards the penal fee; that the impugned order is absolutely silent as to the conditions which the petitioner failed to comply with; that the reference

in the impugned order to the civil litigation is totally irrelevant and that the petitioner herein cannot be non-suited on the ground of waiver as there is no waiver against statute.

In support of his submissions and contentions, learned Senior Counsel places reliance on the Judgments of the Hon'ble Apex Court in *BAR COUNSEL OF DELHI AND ANOTHER (ETC.ETC.) v. SURJEET SINGH AND OTHERS (ETC. ETC.)*¹, *GALADA POWER & TELECOMMUNICATION LTD. v. UNITED INDIA INSURANCE CO. LTD*² and *STATE OF U.P. AND OTHERS v. MAHARAJA DHARMANDER PRASAD SINGH ETC*³.

9. Per contra, it is submitted by Sri Sampath Prabhakar Reddy, learned Standing Counsel for the respondent Corporation that there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India; that the conduct of the petitioner right from filing of the Civil Suit till he filed I.A.No.3/2018 before this Court does not entitle him for any indulgence of this Court under Article 226 of the Constitution of India; that having given an undertaking, agreeing for demolition of the structures constructed unauthorisedly, it would not be open for the petitioner herein to seek any relief from this Court; that the order passed in the name of the Deputy Commissioner got the approval of the Commissioner, as such, it cannot be said that the order is without jurisdiction.

In support of his submissions, Sri Sampath Prabhakar Reddy, learned Standing Counsel for the Municipal Corporation takes the support of

¹ AIR 1980 SC 1612

² (2016) 14 SCC 161

³ AIR 1989 SC 997

the judgments of the Hon'ble Apex Court in *KANTA GUPTA (SMT) v. VIII ADDITIONAL DISTRICT JUDGE, MEERUT AND OTHERS*⁴ and *SANTANU CHAUDHURI v. SUBIR GHOSH*⁵

10. There is absolutely no controversy with regard to the reality that after issuance of notices dated 18.01.2017 and 24.01.2017 under Section 452 (1) and 452 (2) of the Act, the petitioner herein instituted suit O.S.No.135 of 2017, on the file of the VIII Additional Senior Civil Judge, Ranga Reddy District and the said Court initially, on 31.01.2017, granted *status quo* order and thereafter vacated the said order and dismissed the said I.A on 26.12.2017. It is also not in dispute that after receipt of Section 636 notice dated 08.02.2018 petitioner had given a written undertaking letter dated 10.02.2018, requesting three days time to shift his valuables and a copy of the same is placed on record by Sri Sampath Prabhakar Reddy, learned Standing Counsel for the Municipal Corporation. It is also not disputed that the petitioner herein, having given such undertaking, filed W.P.No.4580 of 2018 on 12.02.2018 and once again requested to grant time till 26.02.2018 and this Court granted time till 26.02.2018. On 20.02.2018, petitioner herein filed I.A.No.3/2018 and paragraphs 5 and 6 of the affidavit filed in support of the said interlocutory application are highly crucial, wherein the petitioner stated as follows:

“5. I submit that before the said Writ is reached for hearing before this Hon'ble Court the Respondent officials have demolished the compound wall and on giving my undertaking the demolition of my shed was deferred by granting three days time, and that the same was brought to the notice of this Hon'ble Court on 12.02.2018 and that this Hon'ble Court pleased to extend the said time, to remove the temporary shed till 26.02.2018.

⁴ 1991 SUPP (1) SCC 219

⁵ (2007) 10 SCC 253

6. I submit that the said shed is being used for the purpose of running/conducting a real estate office since I have got a real estate involvement with regard to layout of 50 acres land in Zaheerabad town, Sanga Reddy District. I state that the existing construction is shed but it was substantially furnished with posh and affluent. In order to shift my real estate office to any other place nearby, I require a minimum of six months. I hereby undertake to abide by the order of the Honourable Court before the expiry of six months time. I state that the respondents do not suffer any prejudice if the demolition activity is taken up after six months. Hence I am praying the Honourable Court to grant me six months time for pooling down existing temporary shed and bring it to ground level.”

11. Having said so and having given an undertaking earlier as observed *supra*, petitioner, in furtherance and in the direction of prolonging the matter and evidently giving a go-bye to the promises made in the undertaking letter dated 10.02.2018 and at different stages, filed application on 20th March 2018 under Section 455-A of the Act. The respondent Corporation vide impugned order dated 25.06.2018 rejected the application of the petitioner for regularization on the ground that the measurements in the documents are not tallying with the existing structures and as per the documents the total area of the building is 477.0 sq yards or 398.87 sq. Mt and as per the existing site the total area of the building is 641.42 sq. yards or 536 sq. m. The impugned order also states that there is lot of variation of measurements in the documents and the existing site and that the required set backs are not maintained as per the building rules.

12. In view of the above, the contention that the impugned order is absolutely silent as to the conditions which the petitioner failed to comply

with, is neither tenable nor sustainable and accordingly the said contention of the learned Senior Counsel is rejected.

13. The contention of the petitioner that the respondent did not inform the petitioner the quantum of amount payable towards the penal fee before the order of rejection is also of no significance as the Corporation did not reject the application on the said ground.

14. The contention as to the jurisdiction of the Deputy Commissioner to pass the impugned order, in the considered opinion of this Court, is also unsustainable in view of the approval granted by the Commissioner on 08.06.2018 as evident from the note file, a copy of which is produced by the learned Standing Counsel. It is also not disputed that CMA.No.6 of 2017 filed against the order of the trial Court, dismissing the injunction application is pending.

15. The contention advanced by the learned Senior Counsel that the petitioner herein cannot be non-suited on the ground of waiver as there is no waiver against the statute and that the undertaking given by the petitioner earlier in W.P.No.4580 of 2018 would not come in the way of assailing the order of rejection, in the facts and circumstances of the case and having regard to the stand taken by the petitioner at various stages, is neither sustainable nor can be approved by this Court while exercising extra ordinary jurisdiction under Article 226 of the constitution of India.

16. There is absolutely no dispute with regard to the principles laid down in the judgments cited by the learned Senior Counsel. However, in the facts and circumstances of the case, the principles laid down in the judgments cited by the learned Senior Counsel for the petitioner would not render any assistance to the petitioner herein.

17. For the aforesaid reasons, the writ petitions are dismissed. However, the petitioner is granted two weeks time from the date of receipt of a copy of this order to remove the subject constructions and if the petitioner fails to remove the same within the period stipulated, the Corporation is at liberty to remove the same without any further notice. As a sequel, the miscellaneous petitions, if any, shall also stand closed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 02.07.2018

Note: LR copy to be marked.
b/o grk





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.Nos.4580 and 21707 of 2018

Dated: 02.07.2018

grk