

**THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

**WRIT PETITION No.23106 of 2018**

**ORDER:**

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing for respondent No.1, Sri Sampath Prabhakar Reddy, learned Standing Counsel for GHMC appearing for respondent No.2 and Sri S.Malla Rao, learned counsel appearing for respondent No.3, apart from perusing the material available before this Court.

In the present Writ Petition petitioner herein is seeking a writ of Mandamus against the second respondent-GHMC to cancel the building permission, dated 20.03.2018, issued in favour of the third respondent, by taking appropriate action on the representation, said to have been made by him on 05.06.2018, under Section 450 of the Hyderabad Municipal Corporation Act, 1955 (for brevity, 'the Act').

According to the learned counsel for the petitioner the impugned action, on the part of the second respondent authorities, is highly illegal, arbitrary and contrary to the provisions of Section 450 of the Act. In elaboration it is submitted by the learned counsel that, by misrepresenting the facts, the unofficial respondent herein obtained building permission and, when the same is brought to the notice of the second respondent, statutory duty is cast upon the second

respondent to take action as per the provisions of Section 450 of the Act.

On the other hand, it is submitted by the learned Standing Counsel for GHMC so also the learned counsel for the third respondent that the petitioner herein cannot maintain the present Writ Petition in view of the pendency of civil litigation. In elaboration it is further submitted by the learned counsel for the third respondent that, though the second respondent-GHMC granted building permission in favour of the third respondent herein, strictly adhering to the orders of this Court, no construction activity is being undertaken by the third respondent.

The information available before this Court manifestly discloses that the petitioner herein and the unofficial respondent-third respondent herein filed O.S.No.695 of 2011 and 952 of 2006 seeking perpetual injunction. A common judgment was rendered by the V Additional District Judge, Ranga Reddy District, dismissing the suit instituted by the petitioner herein, while allowing the suit instituted by the third respondent. It is also not in dispute that, as against the said judgment, petitioner herein filed A.S.Nos.99 and 164 of 2018 before this Court and also filed two Interlocutory Applications, seeking interim suspension of the judgment, dated 03.04.2017.

This Court, on 05.06.2018, after hearing the matter, disposed of both the Interlocutory Applications by directing

*status quo* to be maintained by both the parties. Operative portion of the said order reads as under:

*“Accordingly and in the result, both the petitions are disposed of by considering the lis of the first appeals for early disposal subject to other priorities for final hearing by its admission directing the Registry to call for records. Both the parties are directed to maintain the existing status quo as on today.*

*In fact it requires localization since boundaries of the plaint schedule properties of both are one and the same whereas door numbers mentioned are different and a perusal of the door numbers shows vast difference from 1-65/43 and 17A by Uma Rani to 1-65/14/6/24 claimed by Sanghvi Cylinders to say from such a difference not even such door numbers can be at one place and if it is at different place cannot be possible to say claim for plot No.17 and from this it is the duty of both if not at least one to seek for appointment of commissioner at least to direct by Court including in deciding the appeal if necessary at the equal expenses of both sides to appoint an advocate commissioner for localization and to visit the property and localize with reference to the door numbers and plot numbers with reference to municipal records and the respective sale deeds and fix the identity and submit the report by answering the work memos.*

*From the above, the trial Court is directed to name the advocate commissioner and fix his fee to be deposited before the trial Court by both parties equally before issuing the warrant to the commissioner for execution with the assistance of mandal surveyor/municipal surveyor by answering the work memos and after receiving such commissioner report with objections, the lower Court shall transmit the same to this Court for listing the same thereafter for hearing”.*

As against the said order, passed by this Court, third respondent herein carried the matter in S.L.P.No.15762-15673/2018 before the Honourable Supreme Court and the Honourable Supreme Court disposed of the said appeals by way of an order, dated 30.07.2018, and the operative portion of the said order reads as under:

*“It may be recorded that by the impugned order the High Court has directed the Trial Court to name the Advocate Commissioner and fix his fee to be deposited before the Trial Court by both parties equally so that the Advocate Commissioner is able to visit the property and submit his report. It is also made clear by the High Court that after filing of such report by the Advocate Commissioner with the lower Court, the lower Court shall transmit the same to the High Court to enable the High Court to hear the appeal finally.*

*In a matter like this the only direction which can be given is to expedite the hearing of the appeal. For this purpose, the Advocate Commissioner shall be named by the Trial Court immediately so that he is able to visit the site and file his report at the earliest. This exercise shall be completed within a period of three weeks. Thereafter, when the report is received by the High Court, the High Court shall endeavour to hear the appeal expeditiously. We request the High Court to do the same within a period of six months from the receipt of the report”.*

Petitioner herein also filed O.S.No.613 of 2018 on the file of the V Additional District Judge, Ranga Reddy District against the third respondent for declaration of title and recovery of possession. Obviously, the reason, which prompted the petitioner to institute the said suit, is the building permission granted in favour of the unofficial respondent herein on 20.02.2018, which the petitioner referred to in the plaint of the said suit at paragraph No.III (g).

During the course of arguments, it is submitted by the learned counsel for the petitioner herein that in the said suit the V Additional District Judge passed interim order directing *status quo* to be maintained. Learned counsel, by placing



reliance on the judgment of this Court, reported in **GUNTUKA RAJA RAM v. STATE OF TELANGANA AND OTHERS**<sup>1</sup>, submitted that the Commissioner should not have granted the building permission. In the above said reported decision the Commissioner of the GHMC refused to grant building permission on the ground of serious disputes with regard to the title.

In the considered opinion of this Court the principle laid down in the said judgment cannot be made applicable to the case on hand. In fact, after duly taking into consideration all the aspects, this Court, on 05.06.2018, in I.A.No.01 of 2018 in A.S.Nos.99 and 164 of 2018, directed both parties to maintain *status quo* and, since there is an order of *status quo*, granted by this Court, in the considered opinion of this Court, at this stage, it would not be appropriate to direct the Municipal Commissioner to take action on the representation, said to have been made by the petitioner herein, and the same would tantamount to asking the respondent-GHMC to look into the title to the property which, according to the judgment referred to supra, is also impermissible. This Court does not find any merit in the present Writ Petition.

Accordingly, Writ Petition is dismissed. However it is open for the parties to pursue the civil remedies available to have final decision in the civil litigation. It is open for the petitioner

---

<sup>1</sup> 2017 (4) ALD 415

herein to seek appropriate remedies, strictly in accordance with law. There shall be no order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

20<sup>th</sup> August, 2018  
*Tsy*

**A.V.SESHA SAI,J**

