

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

W.P.No.27390 of 2018

ORDER:

In the present writ petition, challenge is to the letter bearing No.3.C22/10038/2018 dated 20.7.2018 of the Deputy Commissioner, Circle No.24, Kukatpally Zone, GHMC, Hyderabad-3rd respondent herein is under challenge.

2. By way of the impugned letter, the office of Greater Hyderabad Municipal Corporation rejected the building application of the petitioner herein.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for Respondent Corporation, Sri Sampath Prabhakar Reddy.

4. According to the petitioner, he is the absolute owner of house plot, admeasuring 237 sq.yards bearing H.No.8-7-113/2/1, Tirumala Colony, old Bowenpally, Secunderabad; that his grand father executed a registered gift deed vide document No.2260/16 dated 29.2.2016, gifting a part of house bearing No.8-7-113/2/1, admeasuring 840 sq.yards in favour of petitioner's mother; that petitioner's mother executed a registered gift deed vide document No.3085/16 dated 21.3.2016, gifting a part of house No.8-7-113/2/1 admeasuring 237 sq.yards in favour of petitioner herein and since then he has been in possession and enjoyment of the said house plot.

5. Earlier, petitioner herein submitted an application dated 2.4.2016, seeking permission for construction of ground plus first floor in the above land admeasuring 237 sq.yards in Sy.No.69 on the ground that the original house became dilapidated. The Deputy Commissioner-3rd respondent vide

letter dated 25.4.2016 rejected the application of the petitioner on the following ground:

“The proposed site is falling in Sy.No.69 of Old Bowenpally Village is covered by Hon'ble High Court case pending in A.S.M.P.No.1649 in A.S.M.P.No.2174/2005 in A.S.No.652 of 2005 of Hon'ble High Court Judicature of Telangana and Andhra Pradesh at Hyderabad”.

6. According to the petitioner, he submitted a representation to the Deputy Commissioner-3rd respondent on 10/11.5.2016, clarifying the position. In the said representation, petitioner stated that the proposed construction of building is not the subject matter of any litigation, especially in A.S.No.652 of 2005 pending before this Court and there is no injunction against the subject property. It is also stated in the writ affidavit that having satisfied with the said representation, the 3rd respondent permitted the petitioner to resubmit all the documents relating to the petitioner's land including building permission of the adjacent house for reconsideration of petitioner's building application and accordingly, petitioner submitted all the documents along with letter dated 13.8.2016 and also enclosed building sanctioned plan of H.No.8-7-113 and tax receipts of the said building etc. The Deputy Commissioner-3rd respondent by way of order vide Lr.No.CSC/72258/GHMC/2016 dated 3.9.2016 rejected the application of the petitioner on the ground that the previous sanctioned plan plot area was not tallying with the proposed area. The above said order of rejection dated 3.9.2016 was assailed in W.P.No.31749 of 2016 and this Court vide order dated 29.9.2016 allowed the said writ petition and the said order reads as under:

“Heard learned counsel for the petitioner and Sri Sampath Prabhakar, learned Standing Counsel for Respondents 2 to 4. The petitioner has assailed the order dt. 03.09.2016 rejecting his application

for building permission for ground and first floor in premises bearing No. 8-7-113/2/1, Survey No. 69, Ghorī Nagar, Old Bowenapally, on the ground that the 3rd respondent had verified the previous sanctioned plan and the plot area is not tallying with the proposed plot area. Admittedly, the petitioner has produced title deed of the property owned and possessed by him. As long as the said property, prima facie, belongs to the petitioner, it is not open to the 3rd respondent to deny permission to him on the ground that the plot area in the previous sanctioned plan is not tallying with the proposed plot area. Therefore, the impugned order is set aside and Respondents 2 to 4 are directed to re-consider the petitioner's application for building permission strictly in accordance with law. This exercise shall be completed within four weeks from the date of receipt of a copy of this order. The Writ Petition is accordingly, allowed. No costs. Consequently, the miscellaneous applications, if any shall stand disposed of."

7. Thereafter, when there was non compliance of the said order, petitioner filed Contempt Case No.486 of 2017 and in the said contempt case, the Respondents produced letter dated 15.4.2017, wherein and whereby the 3rd respondent rejected the application of the petitioner on the ground that the site is not covered by approved layout as required under Section 338 of GHMC Act, 1955. In view of the said order of rejection, C.C.No.486 of 2017 was closed by this Court on 27.10.2017 with a liberty to the petitioner to assail the order dated 15.4.2017. Assailing the said order dated 15.4.2017, petitioner filed W.P.No.10710 of 2018 and this Court on 17.4.2018 in I.A.No.1 of 2018 passed the following order:

"Pending further orders, respondent Nos.2 and 3 shall consider petitioner's application for building permission in accordance with the proceedings in U.O.No.B/1545/TPS/CCP/HO/GHMC/2016/485 dated 19/24-04-2017 issued by 2nd respondent within three weeks and communicate their decision to the petitioner."

8. According to the petitioner, pursuant to the above said order, when the petitioner approached the 3rd respondent with copy of the said order, the

3rd respondent asked the petitioner to make a fresh LRS application through online and as per the direction of the 3rd respondent, petitioner paid Rs.10,000/- towards application, Rs.86,415/- towards building sanction permission, Rs.10,000/- towards processing fee and Rs.10,000/- towards LRS application charges.

9. The 3rd respondent, vide impugned letter dated 20.7.2018 once again rejected the application of the petitioner on the following grounds:

“Further it is inform you that there is a complaint petition dated 12.4.2016 from Sri E.Mahesh Kumar and Sri S.V.Shankar Reddy claiming the ownership over the subject property bearing Plot Nos.31, 32, 33 and 34 part of Sy.No.69 of Raja Rajeshwari Township, Old Bowenpally and also submitted the sale deeds executed by the St.Marys Cooperative House Building Society Ltd., and the suit schedule property for which permission has been applied is falling part in the plot number 31 as per St.Marys layout which has been registered vide Agreement of Sale cum Irrevocable GPA 1754/156 dated 17.3.2016 executed by (1) Smt. Y.Syamala Devi W/o Y.Balaswamy Reddy (2) Sri Y.Sravan Kumar Reddy S/o Y.Balaswamy Reddy in favour of Sri S.V.Shanker Reddy S/o late Sri Venkat Reddy (copy of the document is enclosed).

In view of the above, your building application cannot be considered as per said U.O.Note B/1545/TPS/CCP/HO/GHMC/2016/485 dated 19/24.4.2017”.

10. The present writ petition challenges the validity and legal sustainability of the said order.

11. It is contended by the learned counsel for the petitioner that repeated rejection of the building application of the petitioner by the Respondent Corporation is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is further contended that the pendency of A.S.No.652 of 2005 before this Court cannot be a ground for rejection of the

application as the schedule property pertaining to the suit does not include the present house property. It is further contended by the learned counsel that A.S.M.P.No.1921 of 2005 in A.S.No.652 of 2005 filed by S.Mahesh Kumar Goud and S.V.Shankar Reddy was dismissed by this Court on 9.9.2015 and there is no order in their favour and against the subject property. In elaboration, it is further submitted that Survey No.69 consists of total 15 Acres of land and O.S.No.188 of 2003 covers only 3 Acres which does not include the existence of the present house property.

12. On the other hand, it is contended by the learned Standing Counsel for the Respondent Corporation that there is absolutely no illegality nor there exists any infirmity in the impugned order and in the absence of the same, the questioned order is not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended by the learned Standing Counsel that in view of pendency of A.S.No.652 of 2005 before this Court, the impugned action on the part of the 3rd respondent in rejecting the building application of the petitioner cannot be faulted with. It is further submitted that the petitioner's application cannot be considered as per G.O.Ms.No.151 Municipal Administration and Urban Development (M1) Department dated 2.11.2015.

13. The maternal grand father of petitioner herein instituted O.S.No.181 of 2003 on the file of Court of I Additional District Judge, Ranga Reddy district for declaration of title and possession and for a consequential injunction against three defendants namely (1) St.Mary's Cooperative House Building Society Ltd., (2) S.Mahesh Kumar Goud and (3) S.V.Shankar Reddy. A copy of the decree dated 17.6.2005 is filed before this Court by the petitioner. As per the same, the schedule of property is the land admeasuring Ac.3-09

guntas out of the land bearing Sy.No.69 of Hussainbagh, Old Bowenpally, Ranga Reddy district. The said suit was dismissed by the learned I Additional District Judge, Ranga Reddy district on 17.6.2005. As against the said dismissal of the suit, the maternal grand father of the petitioner preferred A.S.No.652 of 2005 before this Court. In the said appeal, Sri S.Mahesh Kumar Goud and Sri S.V.Shankar Reddy filed A.S.M.P.No.1921 of 2005 under the provisions of Order 39 Rules 1 and 2 of CPC, praying for ad-interim injunction to restrain the appellant therein from making illegal construction on (6) plots of schedule property plot No.30 to 34 and Plot No.3 part of Sy.No.69 of Hussain Bagh, Bowenpally, Ranga Reddy district. This Court, by way of order dated 9.9.2015 dismissed the said application while directing to expedite the hearing of the appeal. As rightly pointed out by the learned counsel for the petitioner, the schedule of property in O.S.No.181 of 2003, as shown in the decree, does not indicate the existence of any house property. Therefore, the reason assigned by the Respondent Corporation with regard to pendency of A.S.No.652 of 2005, by any stretch of imagination, cannot be a ground for rejecting the application of the petitioner.

14. A reading of the U.O. Note No.B/1545/TPS/CCP/HO/GHMC/2016/485 dated 19/24.4.2017 shows that the said proceedings came to be issued by the Respondent Corporation as sequel to the instructions of the State Government vide Memo No.2252/M1/2017 dated 6.4.2015 and by way of the said U.O. Note dated 19/24.4.2017, the Commissioner instructed all the subordinate officers to adhere to the same. It may be appropriate to refer to the said instructions, which reads as under:

“The Government vide letter No.2252/M1/2017 dated 6.4.2016 (2017) have issued following orders to consider building permission in

the plots/sites which were not applied under LRS Scheme 2015 and to take further action accordingly.

‘Building permission in such plots/sites may be considered by the Competent Authority (HMDA/GHMC) by collecting basic penalisation charges as per LRS-2015 and 33% compounding fee on the same plus open space contribution charges (14%) on the present market value of the site/plot applied for Building Permission’.

Therefore, all the concerned Officers i.e. Dy. Commissioners, Zonal City Planners, Asst. City Planners of Circles/Zones and city Planners/Asst. City Planners of Head Office are hereby instructed to comply Government Orders for strict implementation to levy the LRS charges/fees as per Government Letter No.2252/M1/2017, dated 6.4.2016 (2017) along with other usual charges as applicable under Building Permission”.

15. As per the above instructions, it is incumbent on the part of the Respondents to consider the building permission application by collecting basic penalisation charges as per LRS-2015 and 33% compounding fee on the same plus 14% open space contribution charges on the present market value of the site/plot applied for building permission. Since this arrangement is intended solely for those who could not avail LRS guidelines 2015, there is no justification on the part of the 3rd respondent to fix 28.10.2015 as cut-off date. As held supra, the complaint of defendants in O.S.No.181 of 2003 cannot be a ground for rejection in the absence of any order of the Court. Therefore, this Court does not find any justification on the part of the Respondents in rejecting the building permission application of the petitioner herein.

16. For the aforesaid reasons, the writ petition is allowed, setting aside the letter bearing No.3.C22/10038/2018 dated 20.7.2018 issued by the Deputy Commissioner, Circle No.24, Kukatpally Zone, GHMC, Hyderabad-3rd respondent and consequently the Respondents herein are directed to consider the building application of the petitioner in accordance with U.O.

Note No.B/1545/TPS/CCP/HO/GHMC/2016/485 dated 19/24.4.2017 and pass appropriate orders on the building permission application of the petitioner strictly in accordance with law within a period of three months from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 10.10.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.27390 of 2018

10.10.2018

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