

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION Nos.12851 of 2014 and 19083 of 2015

COMMON ORDER:

The 5th respondent in W.P.No.12851 of 2014 is the petitioner in W.P.No.19083 of 2015.

2. Thirteen petitioners filed W.P.No.12851 of 2014 against (1) the Government of Andhra Pradesh, represented by Principal Secretary, Municipal Administration, (2) Regional Joint Director, Municipal Administration, (3) The Municipal Commissioner/Special Officer, Gudivada Municipality, and (4) the Town Planning Officer of Gudivada Municipality besides the unofficial 5th respondent, with the following prayer:

“.....to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in granting permission to the 5th respondent for construction of the residential apartment in D.No:10/154-H1 in Rs.No:202/2 within the Gudiwada Municipal limits, vide proceedings No:G1/B.A/105/2013 dated 18.11.2013, as illegal, arbitrary and the contrary to the Andhra Pradesh Building Rules, 2012 and consequently set aside the permission granted by the 3rd respondent dated 18.11.2013 in favour of the 5th respondent and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

3. The supporting affidavit averments therein are that the 3rd respondent-Municipality granted to the unofficial 5th respondent for construction of a residential apartment in an extent of 377.33 sq. yards

in Sy.No.202 of Valivarthipadu Village of Gudivada Municipality limits, by proceedings, dated 18.11.2013, without conducting even spot inspection and without leaving setbacks. As the construction without observing of not leaving setbacks was going, the petitioners, the owners of the residents of Sri Sai Residency at Door No.10-154-A-1 of Rajender Nagar, Gudivada Municipality limits, whose apartment was constructed five years back with valid permission from the 3rd respondent Municipality, made a representation for the builder constructed six floors contrary to the sanctioned plan and the eastern side of their apartment, another apartment is with five floors and the 5th respondent owns vacant site in between the two apartments of 373 sq. yards supra obtained the permission for the residential apartment of ground + two by depriving the ventilation to the two apartments on either side to the proposed construction in the area of only 373 sq. yards with width of 9 feet and the permission granted by the 3rd respondent to the 5th respondent supra is contrary to the Building Rules, particularly Rule No.5 of the Rules, 2012, and even representations made by the petitioners to prevent the illegal construction by the 5th respondent, at the behest of the 3rd respondent who without action, without spot inspection and did not choose to respond, which made them to file the writ petition questioning the inaction of the 3rd respondent and the illegal construction of the 5th respondent in progress.

4. W.P.No.19083 of 2015 filed by the said unofficial 5th respondent of W.P.No.12851 of 2014 against (1) the Principal Secretary, Municipal Administration, (2) Regional Joint Director, Municipal Administration, (3) Gudivada Municipality, represented by the Commissioner/Special Officer and (4) Town Planning Officer respectively, who are respondent Nos.1 to 4 of W.P.No.12851 of 2014 with the following prayer:

“.....to issue a writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the in action of the 3rd and 4th respondents in acting on the representation dt.21.01.2015 given by the petitioner after removing the alleged deviations pursuant to the Notices issued by the 3rd respondent on 17.05.2014 and 06.06.2014 as illegal, arbitrary, violative of Article 14 of the Constitution of India and consequently direct the respondents to allow the Petitioner to carry on with his construction as per the sanctioned plan at R.S.No.202/2 as per Building Permit No.G1/B.A/105/2013, dt.18.11.2013, as he has removed the alleged deviations in pursuance of the Notices dt.17.05.2014 and 06.06.2014 and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

5. The supporting affidavit averments show that W.P.No.12851 of 2014 is filed questioning the construction making by him with approved permission of the Gudivada Municipality and the High Court in W.P.No.12851 of 2014 directed the Municipal Authorities to take measurements and submit report and the authorities conducted inspection on 29.05.2014 and submitted report saying there are slight deviations on the Southern side and Northern side of his construction

and he submitted his objections to it as the measurements were not properly taken regarding the alleged deviations and there was an interim order, pursuant to the report, passed by the High Court in W.P.No.12851 of 2014 on 04.06.2014 not to make further constructions during the pendency of the writ proceedings before the High Court by giving liberty to file objections to the inspection report. A provisional notice is received from the Municipality, dated 29.05.2014, and he issued reply, dated 31.05.2014, stating there are no deviations and it requires re-survey of the construction site for the measurements taken are not correct and in spite of his reply, the 3rd respondent given another notice, dated 06.06.2014. As the Court passed interim order on 04.06.2014 to remove the constructions, which are made contrary to the sanctioned plan within seven days, and subsequently he submitted his reply and objections to the 3rd respondent to take measurements afresh and because of the stalling of the construction he is suffering from the financial loss and he removed the alleged deviations by the 3rd respondent before 21.01.2015 and made representation, however, in view of the interim order passed by the Court, dated 04.06.2014, the Municipality is not allowing to make further constructions by him, thereby seeking the prayer referred in the writ petition.

6. A perusal of the inspection report sought for by this Court in W.P.No.12851 of 2014 as referred in the counters of the official respondent Nos.2 and 3 is crystal clear of the deviations. A perusal of

the docket proceedings of this Court in W.P.No.12851 of 2014 on 24.04.2014 in W.P.M.P.No.16122 of 2014 speaks the writ petitioner in W.P.No.19083 of 2015 (Respondent No.5 of W.P.No.12851 of 2014) through advocate that the construction of a building is after their leaving a setback of 6 metres on front side, 1 metre each on both sides and 3 metres on back side and strictly according to the sanctioned plan and the learned counsel of the party also undertakes on behalf of the party on the factual aspect of there shall not be any deviation from the sanctioned plan in making the construction for leaving setback areas. However, the counsel for the writ petitioner in W.P.No.12851 of 2014 submitted about the violation by not leaving the setbacks by the 5th respondent of W.P.No.12851 of 2014 and thereby the Court directed the Municipal Commissioner-3rd respondent of W.P.No.12851 of 2014 to inspect and cause submit report as to whether the construction is strictly according to the sanctioned plan or any deviation by not leaving the setbacks, etc. It is while so, on 04.06.2014, there was further order passed by this Court in W.P.M.P.No.16212 of 2014 of the report of the 3rd respondent received pointing out the deviations in the setback area of the sanctioned plan and the report, dated 29.05.2014, clearly mentions that the 3rd respondent-Municipality initiated action against the said unofficial 5th respondent (petitioner in W.P.No.19083 of 2015) under Section 217 of the Andhra Pradesh Municipalities Act, 1965, including to stop the ongoing construction and to submit explanation for the deviations, if not to remove for no reply to the provisional

order already issued and the party represented through advocate of stopped further construction and would not make any further construction and the Court granted time to file objections to the report. As is clear from the counter of the 3rd respondent-Municipality in W.P.No.12851 of 2014 and W.P.No.19083 of 2015, which is common of the reply given by the unofficial 5th respondent of W.P.No.12851 of 2014 (Petitioner of W.P.No.19083 of 2015), of as if there is no deviations is not tenable from the physical verification and thereby pursuant to the provisional notice with no reply further confirmation notice, dated 06.06.2014, as referred supra, was issued in directing to remove the deviations within seven days therefrom. It is the counter affidavit averment of the Municipal Commissioner that thereafter they did not allow the unofficial 5th respondent of W.P.No.12851 of 2014 (Petitioner in W.P.No.19083 of 2015) to make further construction and they re-inspected the premises and found that the deviations mentioned were rectified by demolishing the part of said deviations found in the report of the inspection earlier.

7. Having regard to the above, as on date from the very counter-affidavit of the Municipal Commissioner, there are no existing deviations pursuant to the sanctioned plan in the construction undertaken by the unofficial 5th respondent of W.P.No.12851 of 2014 (Petitioner in W.P.No.19083 of 2015), thereby the writ petitions can be disposed of directing the 3rd respondent-Municipality of W.P.No.12851 of 2014 to permit the unofficial 5th respondent therein

(petitioner in W.P.No.19083 of 2015) to proceed with further construction strictly pursuant to the municipal plan already approved and nothing beyond which is without hindrance to the existing ventilation facility of the petitioners by any deviation. So far as the expiry of the plan of the party concerned, it is his look out if at all to want revision/renewal of the same, to apply to the Municipality according to law to consider.

8. Accordingly and with the above directions, both the writ petitions are disposed of.

Miscellaneous petitions pending in both the writ petitions, if any, shall stand closed. No costs.

20th February 2018

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Dr. B. SIVA SANKARA RAO, J

