

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 38038 of 2018

ORDER:

- 1) The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the 2nd respondent in granting building permission vide permit No.2/C5/12104/2018 dated 21.07.2018 in favour of the respondent Nos.3, 4 and 5, allowing them to proceed with illegal construction in plot Nos.22, 46 part and 47 situated at Haripuri colony in Survey No.9/1/F of Saroornagar, Ranga Reddy District, as illegal, improper and incorrect.
- 2) The averments in the affidavit filed in support of the writ petition would show that the petitioner herein filed O.S.No.56 of 1997 on the file of the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, seeking perpetual injunction against the respondents 2 and 3, which was decreed. Challenging the same, A.S.No.190 of 2004, 10 of 2005 and 12 of 2005 came to be filed, which were allowed setting aside the Judgment and decree passed by the trial court. Aggrieved by the same, the partner of M/s.Unique Builders, Hyderabad rep. by its partner V.Gopal filed S.A.M.P.No.1951 in S.A. 811 of 2012;

S.A.M.P.No.1952 of 2016 in S.A.No.812 of 2012 and S.A.M.P.No.1953 of 2016 in S.A.No.813 of 2012 before this Court. The said miscellaneous petitions were allowed by this court on 26.10.2016, transposing the petitioner as an Appellant No.2. Later, on a representation was said to have been made to the Hon'ble Minister of Telangana (Municipal Administration) Sri K.Taraka Rama Rao, to cause an enquiry into the allegations made, more particularly with regard to building permission granted to the respondents. The inaction lead to filing of Writ Petition No.7956 of 2017, which was disposed of by this Court directing the petitioner to make a representation before the respondent concerned and on such representation being made, the respondents concerned was directed to pass appropriate orders within a period of 8 weeks. Pursuant thereto, the petitioner made an application under Sections 450, 451 and 452 of the GHMC Act and the same was received by the respondent vide No.289689 dated 23.06.2017.

3) What could be culled out from the petition is that the petitioner was aggrieved by the building permission granted by the authorities, on the ground that the plot is situated in Sy.No.9/1/F in Haripuri colony. Sri Metta Chandra Sekhar Rao, learned counsel for the petitioner would submit that the plot is situated in Alkapuri colony, which is situated at a distance of more than 1 Km from

Haripuri colony, and as such the permission granted does not relate to the plot referred to in the permission. He pleads that a perusal of the sale deeds would show that the boundaries are different, which demonstrates that the permission given does not relate to the plot where they intend to construct a building. In any event, he placed on record, number of documents showing how the two plots are different and how fraud has been played by the authorities in collusion with the unofficial respondents in granting permission. He took me through the various documents and pleads that if an Advocate Commissioner is appointed, truth will automatically come out.

4) On the other hand, Sri O.Manohar Reddy, learned counsel for the 4th respondent disputes the averments made in support of the writ petition. According to him, the petitioner made the claim as a partner of M/s.Unique Builders and as such the partnership firm filed O.S.No.56 of 1997 before the Court of I Additional Senior Civil Judge, Ranga Reddy District seeking injunction restraining the defendants therein from interfering over the plaint schedule property in Sy.No.9/1/H admeasuring an extent of Ac.15.00 gts., situated at Saroor Nagar village, Ranga Reddy District. According to him, the present building permission is in respect of land in Sy.No.9/1/F. Since the claim is over

Sy.No.9/1/H and not in respect of Sy.No.9/1/F, the petitioner has no locus to question the permission. It is further stated that in the suit filed before the lower court, M/s.Unique Builders, the partnership firm, was claiming right over the property in Sy.No.9/1/H and once the claim is made by a partnership firm, the petitioner in his individual capacity cannot claim right over the said property. The counsel relied upon the order passed in A.S.No.10 of 2005 and batch dated 04.04.2012, wherein it has been held that the suit filed by the plaintiff was on the basis of documents where there is no survey number and boundaries and it appears to be a speculative one made after the dismissal of the suit filed by the vendors of the plaintiff in O.S.No.214 of 1994. According to him, the finding further shows that the defendants are in possession of the property and that Exs.B-1 to B-51 establish that land was purchased under registered sale deeds, which was plotted and houses were also constructed in the said plots. In view of non-mentioning of survey number and boundaries in Exs.A-3 and A-4, the court found that subsequent documents relied by the plaintiffs under Exs.A-8 to A-22 have no legs to stand. The plea of the respondents appears to be that the petitioner has no property in Sy.No.9/1/F and that the vendor's vendor of the defendants has no right to sell. Referring to the boundaries in the documents filed, it

is urged that even in respect of the land in Sy.No.9/1/H, the petitioner has no registered document and even though the property is situated in urban area and even as the provisions of the Rights in Land and Pattedar Passbooks Act are not applicable to non-agriculture lands, the petitioner seems to have obtained some proceedings from the Tahsildar and basing on the said proceedings, he is claiming right over the property. Having regard to the facts and circumstances of the case, it is submitted that the petitioner has not made out a ground warranting interference.

5) In order to proceed further, it is to be noted that the scope and ambit of the power of the Commissioner of the Municipal Corporation under Sections 428 and 429, in particular, to the extent of his power to examine the title of the applicant for building permit has fallen for consideration of this Court in *Hyderabad Potteries Private Limited v. Collector, Hyderabad*¹. In para 40 of the said judgment it is held thus:

"Of course, the Commissioner has to consider the objections, if any, raised for grant of permission. But, an objection raised by a member of the Committee itself would not be enough to reject the application for grant of permission. The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely

¹ (2001) 3 ALD 600

on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector (s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more."

6) Dealing with powers of the Commissioner, the learned Single Judge of this court in **K.Pavan Raj v. Municipal Corporation of Hyderabad, Hyderabad and others**² observed as under:

"20. A careful reading of the provisions of the Act and the Bye-laws does not indicate that the Commissioner is empowered to entertain a title dispute and adjudicate the same before disposing of the application for grant of building permission. Indeed, both the provisions of Sections 428 and 429 and Clause (v) of Bye-law 4.2 envisage filing of copies of title deeds and there is no provision under which the Commissioner can reject grant of building permit on the ground of title dispute. As held in Hyderabad Potteries' case (2001(3) ALD 600), if any objection regarding title is received, the Commissioner is required to be prima facie satisfied about the applicant's title to the property and his lawful possession of the

² 2008(1) ALD 792

same and he cannot decide title dispute because that is neither one of the duties assigned to him nor he is provided with such an adjudicatory mechanism. A person setting up a rival claim of title, is free to approach the court of competent jurisdiction and seek appropriate relief in that regard. If the applications for building permissions are rejected merely on the ground of third parties raising disputes of title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title. Therefore, wherever the Commissioner is, prima facie, satisfied about the legal title of the applicant and his lawful possession, he is bound to consider the application for building permission on merits, leaving the objector free to approach an appropriate court of law."

7) From the material available on record, it is clear that being satisfied with the material placed before him, at the time of seeking permission, the Commissioner granted permission. A dispute is now raised stating that the permission, which was granted, does not relate to the said plot. The counsel mainly states that the plot which is referred to is not situated in Haripuri colony and that the same is in Alkapuri colony. According to him, Sy.No.9/1/F is situated in Alkapuri colony and not in Haripuri colony.

8) At this stage, the learned standing counsel for Municipal Corporation was asked to find out and place on record the factual

aspects. Initially, on oral instructions he stated that there was only one colony, which was later divided into two, as Haripuri and Alkapuri. However, the Assistant City Planner (ACP) Zonal Office filed his counter stating that the officials of the GHMC visited the area of Alkapuri and Haripuri colony and also the proposed the site. It is stated that originally, Alkapuri area was about Ac.200 in Sy.No.9. Later the said area was divided into plots and developed. New colonies came to be formed giving different names as Haripuri colony, Yadavnagar, New Haripuri colony, Snehapuri colony and Srinagar colony. According to him, in the year 1981, the said Haripuri colony was also called as Alkapuri and later in the year 1990 Haripuri Residence Welfare Association was formed vide Registration No.286/1990 and since then the area is being called as Haripuri colony, Saroor Nagar Mandal, Ranga Reddy District. He admits that the distance between the Haripuri colony and Alkapuri colony is 285 meters from the locality boundaries and the distance between the proposed building site to Alkapuri colony is 330 meters.

9) As stated by me earlier, the plea of the petitioner appears to be that a fraud has been played by the unofficial respondents in collusion with the official respondents and permission came to be granted illegally without any basis ignoring the verdicts given in the

civil cases. Learned counsel for the petitioner also tries to impress upon the court, the variation in the extent of land from one document to another document.

10) In view of the counter filed by the Municipal Corporation, wherein it is stated that Haripuri colony and Alkapuri colony are two different areas now, it may not be necessary to appoint an Advocate-Commissioner to establish the same. Hence, the request of petitioner for appointment of an Advocate-Commissioner is rejected.

11) Since the application made by the petitioner is not placed on record and having regard to the allegation made that a fraud has been played by all concerned, it would be just and proper for the petitioner to make an application explaining the fraud or misrepresentation, played by the concerned in obtaining the permission for building plan, duly enclosing all the necessary documents, within a period of four weeks from the date of receipt of the order, in which event the Authorities concerned shall deal with the same in accordance with law and pass orders within a period of four weeks thereafter, after hearing all the concerned. It is to be noted that any constructions made and to be made by the petitioner over the subject property, shall be subject to the

orders passed in the said application and that he shall not claim any equities later.

12) With the above direction, the Writ Petition is disposed of.

There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:15.12.2018

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