

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

I.A.No.2 of 2018, I.A.No.3 of 2018

In/and

WRIT PETITION No. 40021 of 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus to declare the proceedings issued by the first respondent in No.1/ C11/ 07584/ 2018/ 812 dated 01.11.2018 as illegal and arbitrary.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner and others have applied for building permission for construction of a commercial building consisting of two cellars, ground + four upper floors in Sy.No.28 admeasuring 3388 square yards, situated at Gachibowli Village, Serilingampally Mandal, Ranga Reddy District. The said land was purchased from Begari Saraswathi and others, who were granted ORC Certificate bearing No.L/ 7171/ 2012, dated 30.12.2017 by the Inams Tribunal-cum-Revenue Divisional Officer, Rajendranagar, Ranga Reddy District and the same is in force. The vendors of the petitioner also got mutation proceedings issued by the Mandal Revenue Officer, Serilingampally, vide proceedings in File No.B/ 1373/ 2017 dated 22.01.2018. They purchased the subject property under registered sale deeds bearing

document Nos. 937, 938 and 939 of 2018. They have also entered into a developmental agreement with Konstruct Realty India Private Limited under a registered developmental agreement-cum-G.P.A., dated 10.01.2018. The said developer obtained permission dated 09.09.2018 after following the procedure contemplated under G.H.M.C. Act. While processing the building application, the 1st respondent received a complaint dated 03.05.2018 from the third respondent stating that he is the original owner of the land in Sy.NO.28, Gachibowli village. On receipt of the said complaint, the 1st respondent directed the third respondent to submit documentary evidence within a period of seven days, but he failed to submit any material in support of his claim. Thereafter, the 1st respondent granted building permission in favour of the petitioner. The petitioner and her associates, commenced construction and the work relating to cellars is completed and pillars for the first cellar were also laid by investing huge amount. While things stood thus, the petitioner is served with the impugned notice stating that the third respondent represented to them on 28.09.2018, stating that he is the original owner of the subject land and as he was residing at Delhi since a long time, failed to submit the document on earlier occasion. Basing on the said representation, the 1st respondent is now going to hold a

hearing for disposing of the petition of the third respondent and directed the petitioner to stop construction work until further orders. Challenging the said notice, the present writ petition came to be filed.

3) At this stage it is also to be noted that challenging the permission granted to the petitioner for construction of a building, W.P.No.40395 of 2018 came to be filed, which was disposed of on 09.11.2018 directing the authorities to deal with the representation for canceling the permission in accordance with law, after hearing all concerned.

4) Pending this writ petition, I.A.Nos.2 and 3 of 2018 came to be filed, to implead the petitioners therein as respondents 4 to 9. As there was no objection for impleadment I.A.Nos.2 and 3 of 2018 were allowed.

5) Respondent Nos.4 to 8, who were impleaded vide orders in I.A.No.2 of 2018, filed their counter, raising various objections with regard to granting permission. It is stated that the petitioner and her vendors adopted questionable methods in obtaining permission from the authorities and that the petitioner is neither the owner nor possessor of the said property. It is said that the petitioner in collusion with her vendors namely Smt. B.Saraswathi and others brought into existence fraudulent documents to grab the properties of the

respondent Nos.4 to 8. It is pleaded that the father of the respondent Nos.4 to 8 namely Begari Balaiah was the original inamdar and used to cultivate the land during his life time. After the demise of Begari Balaiah, respondent Nos.4 to 8 succeeded to the said property, came into possession of the same and their application for grant of Occupancy Rights Certificate, is pending consideration. It is stated that M/s. Taramandal Estates Private Limited, also obtained Occupancy Rights Certificate by suppressing the facts and without notice to respondent Nos.4 to 8. It is also stated that the appeal filed by them before the Joint Collector, seeking to set aside the Occupancy Rights Certificate, was allowed on 03.05.2011. The petitioner also filed O.S.No.1030 of 2014 against respondent Nos.4 to 8 and after a keen contest the suit was dismissed and as no appeal came to be filed by the vendors of the petitioner, the same has become final. Relying on number of documents, it is pleaded that respondent Nos.4 to 8 are the lineal descendants of Begari @ Avula Narsaiah. While things stood thus, the petitioner is said to have executed a registered sale deed dated 22.10.2008 in respect of Ac.0.07 gts., in Sy.No.91/2 of Raidurgam Village, Serilingampally Mandal, Ranga Reddy District, which is also inam land and one A.Narsaiah, the original inamdar. After his demise, occupancy rights certificate vide proceedings dated 12.09.2008, which

was marked as Ex.B4 in O.S.No.1030 of 2014, refer to the names of Narsimha, Satyanarayana and Eshwaraiah. The vendors of the writ petitioner also executed a registered sale deed dated 02.10.2010 to an extent of Ac.0.03.5 gts., in favour of Asthra Projects Private Limited. This document is also marked in the said suit. The counter affidavit which has been filed by respondent Nos.4 to 8, refer to various writs filed by either parties and the orders passed therein. It is stated that suppressing all the facts, W.P.No.39873 of 2017 came to be filed by the petitioner against the Revenue Divisional Officer seeking a direction to proceed with the enquiry behind the back of respondent Nos.4 to 8 and fraudulently obtained Occupancy Rights Certificate in respect of land admeasuring Ac.0.20 gts. It is also stated that respondent No.9 herein filed C.R.P.No.4242 of 2018 before this Court against B.Saraswathi and others, to set aside the Occupancy Rights Certificate vide proceedings dated 30.12.2017, which was granted to the vendor of the writ petitioner. Having regard to the above, it is pleaded that the authority was justified in prohibiting the writ petitioner from proceeding with the construction until further orders.

6) Respondent No.9, who got impleaded vide I.A.No.3 of 2018, filed counter stating that he purchased land admeasuring ac.0.28 gts., in Sy.No.28 vide document

No.2012/ 1997, dated 21.03.1997 and since then he is in possession and enjoyment of the property; got his name mutated as pattadar in revenue records vide proceedings No.B/ 1936/ 2000, dated 16.11.2012. Thereafter, he made an application before the Revenue Divisional Officer, Chevella Division, for issuance of Occupancy Rights Certificate. After conducting due enquiry, the Revenue Divisional Officer, Chevella, issued occupancy rights certificate in his favour, vide proceedings dated 03.09.1998. After expiry of more than 12 years, respondent Nos.4 to 8 filed an appeal against Smt. Begari Sulochana, in which he filed counter. By an order dated 03.05.2011, the Joint Collector, set aside the occupancy rights certificate issued in his favour. Aggrieved by the same, he filed W.P.No.25704 of 2011, which is pending. It is also stated that he also filed C.R.P.No.4242 of 2018 before this Court against B.Saraswathi and others, to set aside the Occupancy Rights Certificate vide proceedings dated 30.12.2017, granted to the vendor of the writ petitioner.

7) The short question that arises for consideration is whether the Commissioner was right in restraining the writ petitioner from proceeding with construction?

8) The scope and ambit of the power of the Commissioner of the Municipal Corporation under Section 428 and 429, in particular, to the extent of his power to examine the title of

the applicant for building permission fell for consideration of this Court in *Hyderabad Potteries Private Limited v. Collector, Hyderabad*¹. In para 40 of the said judgment, the Court 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 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.”

¹ (2001) 3 ALD 600

9) Keeping this judgment in view, I will now proceed to decide as to whether the authorities were right in prohibiting the petitioner from proceeding with further condition.

10) Sri Vedula Srinivas, learned counsel appearing for the petitioner would submit that in view of the judgment in Hyderabad Potteries Private Limited case (1 supra), the question of authorities going into the validity or otherwise of the title would not arise, more so, in the manner in which the petitioner was restrained from proceeding with the construction of work, while issuing the impugned order. It is urged that basing on a representation given by an aggrieved person, who earlier did not submit any documentary evidence, and when the permission granted has not yet been cancelled, there is no justification for the authorities to direct the petitioner to stop construction until further orders. He further submits that once permission is granted, the authorities have no right to cancel the same or prevent the petitioner from proceeding with further construction.

11) Sri B.Veera Reddy, the learned counsel appearing for respondent Nos.4 to 8 (implead petitioners) would submit that the petitioner herein has come to the Court with un-clean hands and since the same counsel appeared even in the earlier round of litigation, the facts relating to the dispute between the parties ought to have been disclosed in the present writ

petition. It is pleaded that though there is no specific provision giving power to the Commissioner to stop the constructions as an interim measure, but the counsel would contend that power to grant permission includes power to stop further construction.

12) The learned Standing Counsel appearing for Municipal Corporation would submit across the bar that the Corporation should enquire into the matter pursuant to the impugned notice and pass appropriate orders in accordance with law.

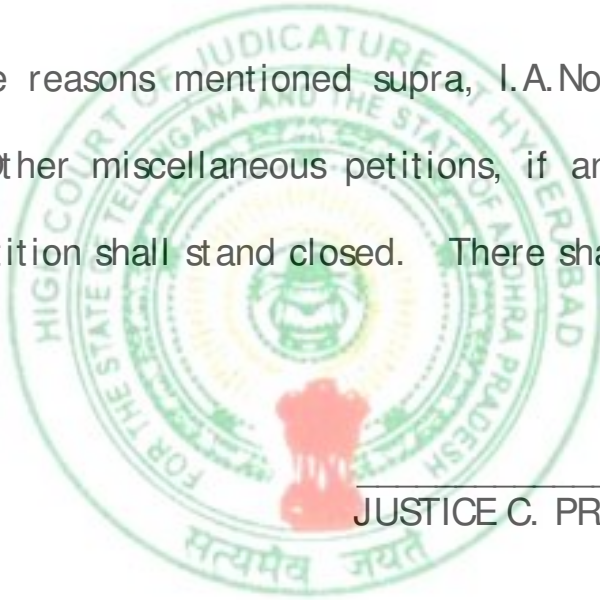
13) From the material facts referred to above, it is clear that the petitioner herein proposed to construct a commercial building consisting of two cellars + ground + four upper floors, situated in Gachibowli Village. While processing the application for permission, a complaint was received from the third respondent by name G.Venkateswar Reddy, dated 03.05.2018. After examining the complaint, a letter was addressed to the third respondent to submit documentary evidence within seven days. As the third respondent failed to submit any documents, permission was granted for construction of a building. Thereafter, the very same third respondent through his representation, dated 28.09.2018 enclosing the sale deeds, informed that he is original owner of the land, which was encroached upon by Cusions Food Court, who are trying to construct a building by obtaining permission

with fake documents. Having regard to the above, the authorities while issuing a show-cause notice directed the petitioner not to proceed with the construction until further orders. While things stood thus, respondent Nos.4 to 8 also made an application for cancellation of the permission stating that the writ petitioner has no right or title over the said property.

14) From the factual aspects referred to above, it is clear that as on today the permission granted to the petitioner is still in force. As long as the said permission is not cancelled the authorities were not justified in directing the petitioner to stop construction, more so, basing on the complaint lodged by the third respondent herein. In fact, as seen from the record, even prior to granting permission, a notice was issued to the third respondent asking him to produce the documents, but he has failed to do so. As such permission for construction came to be granted. Thereafter, an application came to be filed by the third respondent for cancellation of the permission under Section 450 of the GHMC Act. Since the request of the third respondent and the implead petitioners, to the Commissioner requesting him to have a look into the title and lawful possession is pending consideration, it may not be proper for the authorities to direct the petitioner to stop construction until further orders, pending consideration of the matter.

15) Hence, Writ Petition is allowed, setting aside only that portion of the impugned order, prohibiting the petitioner from construction until further orders. Further, the authorities are directed to consider the objections/complaints made by the third respondent as well as by the implead petitioners and pass appropriate orders within a period of four weeks from today. It is further to be noted here that any construction made shall be subject to the result of the representation and that he will not claim any equities thereafter.

16) For the reasons mentioned supra, I.A.Nos.2 and 3 are allowed. Other miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.



JUSTICE C. PRAVEEN KUMAR

20.12.2018
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