

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CONTEMPT CASE No. 2780 OF 2017

ORDER :

Heard learned counsel for the petitioner, Sri L. Venkateshwar Rao, learned Standing Counsel for Respondents 1 to 3 and Sri M.A.K. Mukheed, learned counsel for the 4th respondent.

This Contempt Case is filed for the alleged flouting of the order dated 08.02.2017 in Writ Petition No. 4008 of 2017.

The grievance of the petitioner in the Writ Petition is that on earlier occasion, when the 4th respondent had been making construction on the terrace of premises bearing Municipal No. 6-3-456/A/20, Dwarakapuri Colony, Panjagutta, Hyderabad, without obtaining permission / sanction from the authorities concerned, she filed Writ Petition No. 3066 of 2010, which was disposed of by this Court, by Order dated 15.02.2010, recording the assurance given by the authorities that action had already been initiated by issuing notices under Sections 452 and 636 of the Greater Hyderabad Municipal Corporation Act, 1955. For some time, the 4th respondent stopped construction, but however, once again, he started dumping material / further construction. Hence, the petitioner filed the present Writ Petition No. 4008 of 2017. By the Order dated 08.02.2017, this Court recording the submission made by the learned Standing Counsel for the Corporation that action would be taken in accordance with law and objections of the petitioner would be considered, disposed of the Writ Petition with a direction to the respondent authorities not to permit any construction by the 4th respondent without there being any

sanction / permission as is required in law and without considering the objections raised by the petitioner.

In the affidavit filed in support of the Contempt Case, the petitioner submits that the respondents failed to take any action on the illegal constructions made by the 4th respondent. It is her case that she gave representations dated 10.03.2017 and 22.08.2017 to the respondents to comply with the orders of this Court, dated 08.02.2017, but in vain.

The 1st respondent filed the counter-affidavit denying the averments of the petitioner. An additional counter-affidavit was filed on behalf of Respondents 1 to 3 by the 1st respondent on 31.10.2018, wherein, it is stated that in obedience to the orders of this Court, he had verified the Google maps, which show that no new construction has taken place, as was alleged by the petitioner. It is further asserted that it is on account of the family disputes, the writ petitioner, who is the sister of the 4th respondent, has been making complaints repeatedly against the Corporation.

In the counter-affidavit filed by Respondent No.2, it was specifically asserted that during the routine inspection, the respondent Corporation authorities noticed unauthorized construction activity by the 4th respondent over the terrace. Immediately, notices were issued on 10.03.2016 under Sections 461(1) and 452 (1) of the GHMC Act calling for documents and sanctioned plan for verification. It is further stated that on 18.03.2006, an order of *status quo* was received from the civil Court in I.A.No. 216 of 2016 in O.S.No. 693 of 2016 on the file of the VI Junior Civil Judge's Court, City Civil Courts, Hyderabad and in view of the said order, no further action was taken. It is

however, stated that they have already initiated action with regard to the alleged construction and as soon as the matter gets settled in the civil Court, necessary steps would be taken.

The 4th respondent had filed counter-affidavit stating that in a site belonging to the family, over an extent of 690 square yards, 200 square yards were acquired by the GHMC for road widening and the remaining land in an extent of 500 square yards was given to the developer, who had completed the construction in 2002 and handed over its possession to the land owners, including the petitioner and himself. So far as the writ petitioner and the other brothers are concerned, they had sold away their shares. It is further stated that he only had retained his share of property and residing therein. It is also stated, a pent house of 800 square feet was constructed by the developer and allotted to this respondent. The petitioner has been demanding further money without there being any entitlement, hence, she has been lodging complaint after complaint to the GHMC authorities and the municipal authorities were also threatening to demolish the structures which were constructed prior to 2002 without following due process. In those circumstances, the respondent filed O.S. No. 693 of 2016 against the GHMC and the VI Junior Civil Judge had granted *status quo* and the said suit is pending.

Reply affidavits are also filed by the contempt petitioner denying various averments. In para 5, it is stated that Respondents 1 and 2 had admitted that the Corporation had learnt that instead of complying with the notice, directly, the 4th respondent had approached the VI Junior Civil Judge's Court and filed O.S. No. 693 of 2016 for permanent injunction. It is further

stated that the 4th respondent is taking shelter from the orders of the civil Court and further the injunction granted by the civil Court does not relate to the 5th floor but relates to only flat No. 401, in 4th floor. It is further asserted that with the help of the official respondents, the 4th respondent had proceeded with the construction over the terrace of the 5th floor by misleading this Court and clearly flouting the order dated 08.02.2017.

Having regard to the respective submissions, the question which requires to be considered is whether the 4th respondent had made any construction after the order dated 08.02.2017 and that Respondents 1 to 3 failed to take action pursuant to the orders of this Court.

The petitioner in the affidavit filed in support of the Contempt Case, except stating that the Order of this Court was violated, no details or particulars were provided with respect to the constructions made or permitted to be made by the 4th respondent. There is no material whatsoever placed before this Court. Though the petitioner stated that the respondents had failed to consider the objections raised by her, a perusal of the affidavit discloses that she did not state any representation having been made before filing of the Writ Petition, specifically bringing to the notice of the authorities the unauthorized construction, and there is also no material placed before this Court by the contempt petitioner to show that construction was made after this Court passed order on 08.02.2017. Further, the fact that the 4th respondent filed a suit before the VI Junior Civil Judge's Court against the GHMC way back in 2016 and an order of status quo was passed therein is not

in dispute, which *prima facie* indicates that as a matter of fact, taking into consideration the complaints made by the 4th respondent, action was initiated, which resulted in his approaching the civil Court. The said aspect itself indicates that the construction was made prior to 08.02.2017. In a strict sense, there being no construction made by the 4th respondent, permitting him to proceed further by Respondents 1 to 3 does not arise.

Applying the parameters, as these are contempt proceedings, the Court would have to strictly consider whether there is any violation of the order passed by it. The facts on record do not persuade this Court to come to the conclusion that there was any construction made after passing the order on 08.02.2017. In that view of the matter, it cannot be said that there is contempt on the part of the respondents and hence, the Contempt Case is closed. However, it is made clear, observations made now are limited only for the purpose of disposal of this Contempt Case and it is always open for the respective parties to work out their remedies, if they are so advised, in accordance with law.

Consequently, the miscellaneous Applications, if any shall also stand closed.

CHALLA KODANDA RAM, J

21st December 2018

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