

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.17664 OF 2019

Date: 28.08.2019

Between:

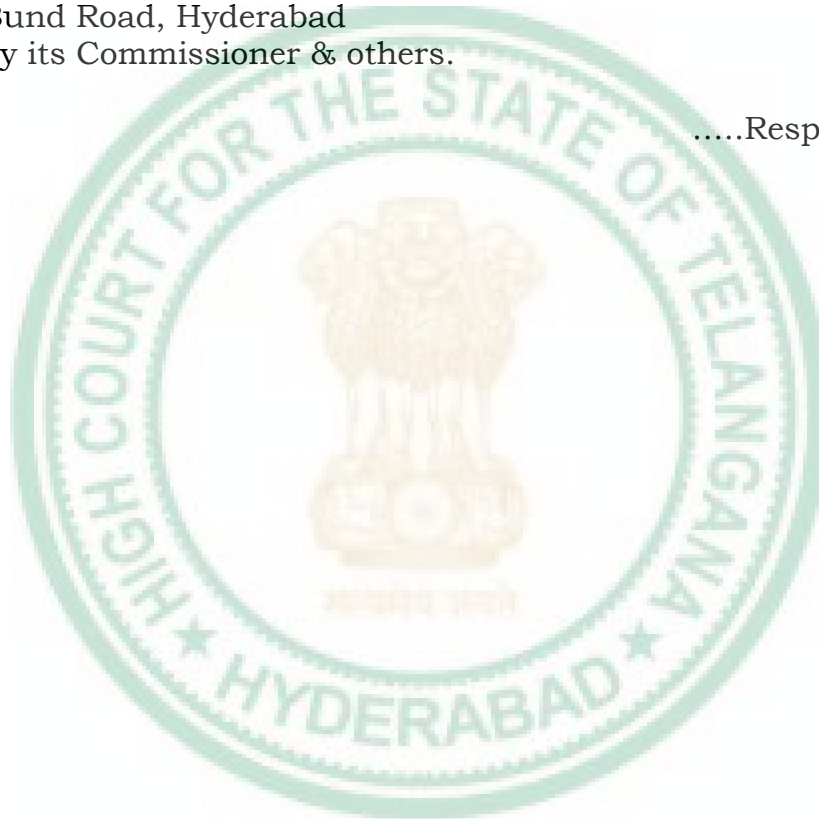
Bandi Madhusudhan Goud, S/o.Kista Goud,
Aged about 45 yrs, R/o.D.No.6-22,
Vennelagadda Colony, Jeedimetla, Hyderabad,
Medchal-Malkajgiri District.

.....Petitioner

And

The Greater Hyderabad Municipal Corporation,
Tank Bund Road, Hyderabad
Rep., by its Commissioner & others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

The writ petition is filed challenging the inaction of respondents No.1 and 2 in not cancelling the building permissions vide permit No.3/C28/08231/2019, C3/C28/07903/2019 and 3/C28/7902/2019, dated 27.5.2019, 18.5.2019 and 18.5.2019, respectively issued in favour of the respondents No. 5 to 7 under section 450 of the GHMC Act, 1955, as the respondents No. 5 to 7 have obtained these permits on the basis of fraud and misrepresentation of the facts.

2. Petitioner claims to be the absolute owner and possessor of the plot bearing Nos. 91 and 92 admeasuring 600 sq. yards forming part of Sy.No.312, situated at Neredmet, Malkajgiri Mandal, Medchal-Malkajgiri District and submits the registered sale deed vide Doc. No. 4671/2008, dated 19.11.2008 in support of the claim. It is the petitioner's contention that respondents No. 3 and 4, taking advantage of his absence from the subject property, were trying to interfere with his peaceful possession of the property under the guise of false documents and sale deeds. To protect against such illegal interference, petitioner filed O.S.No.208 of 2009 on the file of the Principle Senior Civil Judge, Ranga Reddy at L.B. Nagar, praying to grant decree of perpetual injunction against the father of respondents Nos. 3 and 4. In I.A. No. 175 of 2009 the trial Court granted order of *status quo*. It is the petitioner's contention that despite such order, respondents 3 and 4 grabbed the subject property, constraining the petitioner to file I.A. No. 652 of 2013 in O.S. No. 208 of 2009, seeking to withdraw the said suit

with liberty to file a fresh suit. The Court granted such liberty. Consequently petitioner filed land grabbing case vide L.G.C. No. 784 of 2016 in the Court of XVI Addl. District Judge, Malkajgiri, against respondents 3 and 4. While this was pending, it is alleged, respondents 5 to 7 started construction on the subject property.

3. Petitioner made a representation to respondent No. 2 on 11.7.2019, to stop the illegal construction on the property and was in turn orally informed that building permissions were granted by respondent No. 1 in favour of respondents 5 to 7. The permits revealed to the petitioner that respondents 3 and 4 have alienated the subject property to respondents 5 to 7. The petitioner also contends that respondents 3 and 4 have grabbed his property bearing plot Nos. 91 and 92 admeasuring 600 sq. yards forming part of Sy.No.312, under the guise of owning plot Nos. 42, 43 and 44 forming part of Sy.No.310 to 312, and respondents 5 to 7 are making constructions on petitioner's land. The petitioner made another representation on 31.7.2019 to respondents 1 and 2, seeking cancellation of the building permits granted to respondents 5 to 7 under Section 450 of the GHMC Act as the permits were obtained by fraud and material misrepresentation, without disclosing the pendency of the LGC case and only disclosing the dismissal of O.S. No. 208 of 2009 as withdrawn. He also seeks a direction to the respondents 1 and 2 to stop the illegal construction.

4. Section 450 vests extra-ordinary power to cancel the building permission already granted. Primary requirement to initiate proceedings under this Section is while obtaining building

permission person made material misrepresentation or made fraudulent statement. Only if the competent authority, *prima-facie* opined that one/or both of these acts were stated to have been committed by the applicant, he may initiate proceedings under this Section and after affording due opportunity he may cancel the building permission. The issue of alleged fraud played by respondents 3 and 4 is to be adjudicated in LGC.

5. A person is stated to have played fraud or made misrepresentation only if he had the knowledge of true facts and/or deliberately played fraud knowing fully well its consequences. From the pleadings it appears that though petitioners aver that respondents 3 and 4 sold the property to respondents 5 to 7, it is not stated when this sale transaction took place and whether respondents 5 to 7 were aware of pending litigation. Respondents 5 to 7 are not parties to LGC. To hold that respondents 5 to 7 played fraud and made misrepresentation of facts and have not disclosed pending Land Grabbing Case (LGC), it must be asserted that they had the knowledge of pending litigation and have deliberately suppressed the said fact.

6. From the averments in the affidavit filed in support of the writ petition, it is apparent that petitioner is not in possession of the subject property and alleging that respondents 3 and 4 have grabbed his property, he filed LGC No.786 of 2016 in the Court of XVI-Additional District Judge, Malkajgiri and the same is pending in the said court. Further, no injunction was granted by Trial Court.

7. While respondents 3 and 4 assert that they purchased plot Nos.42 (part), 43 and 44 in the year 2000 and 2001, petitioner asserts that he purchased subject property in the year 2007. Further, according to petitioner in the guise of owning plot Nos.42 (part), 43 and 44 respondents are encroaching into his property. *Prima-facie*, it appears that petitioner is not disputing the ownership claim of respondents 3 and 4 on Plot Nos.42 (part), 43 and 44, but asserts of grabbing his property in the guise of owning those plots. It is thus apparent that there are rival claims and issue needs to be adjudicated by the civil Court where LGC is pending.

8. The Commissioner can not go into disputed facts and decide the ownership claim, more so, when litigation is pending. Unless, the same is decided in LGC, the issue of suppression/fraud cannot be gone into. Thus, no case is made out to mandate the Commissioner to exercise powers under Section 450.

9. The Writ Petition deserves to be dismissed and it is accordingly dismissed. It is made clear that there is no expression of opinion on *inter se* disputes and above aspects were noted only to assess whether petitioner has made out prima-facie case to hold that inaction of the Commissioner in acting on the representation of petitioner to exercise power under Section 450 is illegal and warrants issuing of directions. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

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Rds

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