

High Court for the State of Telangana

The Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

W.A. No. 934 of 2019

Date: 20-12-2019

Between:

Ms. R. Ashmita,
D/o Mr. Rajendra Prasad Jaiswal

...Appellant

And

Mr. Narendra Prasad Jaiswal
s/o late Sohan Lal, and 2 others

...Respondents

Counsel for the Appellant:

Mr. Aadesh Varma

Counsel for respondent No. 1:

Mr. P. Vishnuvardhan Reddy

Counsel for respondent Nos.2 & 3:

Mr. Pasham Krishna Reddy

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

The appellant has challenged the legality of the order dated 28-11-2019, passed by a learned Single Judge, in W.P. No. 37863 of 2018, whereby the learned Single Judge has passed the following order:

Since the relief sought in this writ petition is as to consideration of the application of the petitioner made under Section 455-A of the Act, the writ petition is disposed directing the respondents 1 and 2 to dispose of the application made by the petitioner under Section 455-A of the Act subject to conditions laid down therein and pass orders thereon, in accordance with law, after issuing notice to the 3rd respondent and affording an opportunity to her to file objections and personal hearing in the matter. It is also open for the petitioner to file documents relating to the subject matter before the 2nd respondent and in such an event, the 3rd respondent is also at liberty to file documents in reply thereof. This entire exercise shall be completed by the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. Till a decision is taken in the matter within the time ordained by this Court, no coercive steps be taken in the matter. However, in the event of the application of the petitioner referred to above is rejected, as a necessary corollary the respondent-authorities are directed to take action for demolition of the building, which is the relief sought in WP No. 39290 of 2018, within two weeks from the date of decision, in case the application of the petitioner is rejected. The writ petition, being WP 39290 2018 is also disposed of.

Briefly, the facts of the case are that the respondent No. 1, Mr. Narendra Prasad Jaiswal, claims to be the absolute owner, and possessor of house No. 22-1-520, situated at Noorkhan Bazar, Sultanpura, Hyderabad. According to him, his mother,

late Radha Bai, was the owner of the said house. After her death, the property was inherited not only by himself, but also by his other siblings. Moreover, there was an oral partition amongst the brothers and sisters. According to respondent No. 1, his four sisters gifted their shares admeasuring 102.85 square yards *vide* two registered gift settlement deeds, bearing document No. 2553 of 2017 dated 06-05-2017, and document No. 2690 of 2017, dated 15-05-2017. Further, according to him, since the house was in a severely dilapidated condition, it was hazardous for the occupants of the house to live in. Therefore, looking at the urgency, he had reconstructed the house. He had also filed an application, dated 09-09-2017, before the Greater Hyderabad Municipal Corporation (for short 'the GHMC'), for regularisation of the construction made by him. However, the said application went unheeded.

After construction of the house, certain disputes arose between respondent No. 1, and his niece, Ms. R. Ashmitha, who is the appellant before this Court. She submitted a complaint before the GHMC. On the basis of the said complaint, on 31-07-2017, the GHMC issued a notice to respondent No. 1, under Sections 451(1) and 425(1) of the Greater Hyderabad

Municipal Corporation Act, 1955 (for short 'the Act'), to show cause as to why the said property should not be demolished.

Immediately, the respondent No. 1 filed a civil suit, *namely* OS. No. 1915 of 2017, before the Junior Civil Judge, City Civil Court, Hyderabad. Along with the plaint, he also filed an application under Order XXXIX, Rules 1 and 2 CPC. Initially, the learned Civil Court granted a *status quo* order in favour of the respondent No. 1. However, the same was vacated on 20-11-2017. Aggrieved by the vacating of the interim order, the respondent No. 1 filed a Civil Miscellaneous Appeal, *namely* C.M.A. No. 41 of 2018, before the XI Additional Chief Judge, City Civil Court, Hyderabad. Although, initially, the first appellate Court granted an interim order in favour of respondent No. 1, but subsequently, the said interim order was vacated.

Consequently, on 15-09-2018, the GHMC issued a notice to the respondent No. 1, for demolition of the property. In reply to the said notice, the respondent No. 1 claims that he filed an explanation on 17-09-2018. However, without considering his explanation, the GHMC issued a demolition order on 19-09-2018. Since respondent No. 1 was aggrieved by

the issuance of the demolition order dated 19-09-2018, he filed W.P. No. 37863 of 2018 before this Court. By common order dated 28-11-2019, the learned Single Judge has disposed of the aforesaid writ petition, along with another writ petition, *namely* W.P. No. 39290 of 2018, filed by the appellant, in the terms mentioned hereinabove. Hence, this appeal before this Court.

The learned counsel for the appellant submits that while Section 455-A of the Act permits regularisation of a building constructed without sanctioned plan, Section 455-AA of the Act begins with a non-abstante clause, and clearly prescribes a cut-off date. According to the latter section, an illegal construction can be regularized, provided the construction was raised prior to 28-10-2015. However, as the present construction was raised, according to the learned counsel for the appellant, in 2017, the learned Single Judge was unjustified in directing the GHMC to consider the representation filed by respondent No. 1 within the stipulated period of two weeks.

Heard the learned counsel for the appellant, and the learned counsel for the respondent No. 1, and perused the impugned order.

A bare perusal of the order passed by the learned Single Judge clearly reveals that the learned Single Judge has directed the GHMC to consider the representation filed by respondent No. 1 within a stipulated period of two weeks, that, too, after giving an opportunity of hearing to both the respondent No. 1, and the appellant. Needless to say, once an explanation/representation has been filed by the respondent No. 1, the GHMC was legally bound to consider the same prior to passing the demolition order. Since the learned Single Judge has directed the GHMC to consider the representation, after giving an opportunity of hearing to the respondent No. 1, and to the appellant, obviously, the appellant cannot be aggrieved by such a direction.

It is, indeed, trite to state that before any order is passed by the GHMC, which may adversely affect the interest of the respondent No. 1, and the interest of the appellant, both the parties have necessarily to be heard by the GHMC. Therefore, even if the representation /explanation seeks regularisation of an alleged illegal construction raised by the respondent No. 1 after 28-10-2015, even then, the GHMC is required to consider, and to pass a reasoned order on the explanation/representation

filed by the respondent No. 1. Therefore, this Court does not find any illegality, or perversity in the impugned order.

For the reasons stated above, this Court does not find any merit in the present writ petition. It is, hereby, dismissed.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 20-12-2019
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