

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.37863 of 2018 & 39290 of 2018

COMMON ORDER.:

Both the writ petitions are inter connected and as the subject matter is same, they are taken up for hearing and being disposed of together. It would suffice if facts in WP.No.37863 of 2018 are adverted to.

02. The writ petition (WP No No.37863 of 2018) is filed seeking to issue a writ more particularly one in the nature of mandamus declaring the action of the official respondents in seeking to demolish the house bearing H.No. 22-1-520, situated at Noorkhan Bazar, Sultanpura, Hyderabad (for short, "the building") pursuant to the notice dated 19-09-2018 without considering the applications made by the petitioner on 26-09- 2018 and 10-10-2018 for regularization of the building under Section 455-A of the Hyderabad Municipal Corporation Act, 1955, (for short, "the Act") as being illegal, arbitrary and unreasonable and for issuance of appropriate consequential directions to the official respondents to regularize the building, to secure the ends of justice and not to take any coercive steps till then.

03. The petitioner claims to be absolute owner and possessor of the building. That earlier as the building was in severely dilapidated condition and the structure of building also weakened, he got demolished the old building and

constructed a new building, view of the urgency and no other accommodation was available to them. That subsequent to the completion of construction of the building, the 3rd respondent, who is the daughter of his brother started making disputes, with no right or interest in the building property. That the 3rd respondent then made a compliant to the 2nd respondent-Deputy Commissioner, GHMC, which was acted upon and a notice issued vide Notice No.655/TPS/GHMC/C6(4A)/2017, dated 31-07-2017, under Section 451 (1) & 425 (1) of the Act, to show cause why the building should not be demolished for the irregularities stated therein. That subsequent to the issuance of the said notice dated 31-07-2017, the petitioner filed suit being OS No.1915 of 2017 for perpetual injunction against the respondents on the file of Junior Civil Judge, City Civil Court, Hyderabad, along with a petition under Order 39, Rule 1 & 2 CPC for grant of ad-interim ex-parte injunction, wherein the trial Court, though granted status-quo order, but the same was vacated on 20-11-2017. Aggrieved by the same, the petitioner preferred Civil Misc. Appeal being CMA No.41 of 2018 on the file of XI Addl. Chief Judge, City Civil Court, Hyderabad. That in appeal, though the 1st appellate Court granted interim order, but ultimately it was also vacated.

04. While the matter stood thus, the official respondents have issued the notice dated 15-09-2018 seeking to demolish

the building while calling for the explanation in that behalf. That the petitioner submitted his explanation on 17-09-2018, but the same was not considered in the proper perspective and passed the impugned order for demolishing the property. That the petitioner also made a fresh application before the official respondents for grant of permission on 26-09-2018 along with DD vide No.006694 for Rs.10,000/- drawn in favour of the Commissioner, GHMC, towards the application fee under Section 455-A of the Act, but, so far no action has been taken by the official respondents on the same. That when the respondent-authorities tried demolish the building highhandedly without following the due process of law, the petitioner made another application on 10-10-2018 along with the building plan to regularize the construction of building under Section 455-A of the Act by conceding to accept the penalty fee with a request to not to demolish the building, pending orders to be passed on his application for regularization. That so far no action has been taken by the official respondents in that behalf. Hence, the writ petition.

05. Counter affidavit is filed by 2nd respondent wherein it is stated that the petitioner made illegal construction of the

building without taking prior permission. That when the petitioner commenced construction, the authorities required the petitioner to furnish copy of the permission and related documents, but the petitioner instead of producing the permission copy and documents, approached the civil Court by way filing suit OS No.1915 2017 and obtained interim order of status-quo. That taking advantage of the interim order of status-quo, the petitioner proceeded with the construction without the permission and contrary to the interim orders passed by the trial Court. That the petitioner having received the notice dated 31-07-2017 issued by the 2nd respondent, did not respond to the same but proceeded with the construction under the shelter of order of status-quo, which is in clear violation of the order passed by the Court and abuse of process of law and suppression of facts. That after the dismissal of the injunction petitions by the trial Court, the petitioner has no right to seek regularization of illegal construction, which is made contrary to the order of the civil Court and without obtaining permission from the Municipal Corporation. That after dismissal of the injunction applications filed by the petitioner, notice under Section 452 (2), dated 15-

09-2018 is issued to which the petitioner filed his explanation. Thereafter, the impugned notice dated 19-09-2018 is under Section 636 of the Act calling upon the petitioner to remove the un-authorized construction/deviated portion within (24) hours failing which the same will be removed by the GHMC and expenses thereof will be recovered from the petitioner. That the 3rd respondent also made a complaint to authorities to the effect that the petitioner made constructions without obtaining building permission. That the 3rd respondent filed the writ petition being WP No.39290 of 2018 seeking a direction to the respondent authorities to take action against the illegal construction of building constructed by the petitioner.

06. Counter affidavit is filed by the 3rd respondent wherein *inter alia* it is stated that the petitioner has mis-represented facts before this Court and was successful in obtaining interim orders on 12-10-2018 and also got them extended from time to time. That the applications of the petitioner for regularization of the building cannot be considered as no regularization can be made of an illegal construction which has been done without obtaining permission from the

Municipal authorities. That the petitioner has also violated the order passed by this Court on 12-10-2018 wherein it was directed that the petitioner shall not make any further constructions, but the petitioner, under the guise of the interim order has completed the construction of the building and he is guilty of violation of the order passed by this Court on 12-10-2018. It is also denied that the petitioner is the absolute owner and possessor of the building admeasuring 128.56 sq. yards out of the original house site admeasuring 180 sq yards. That the petitioner has sought regularization of the building which has been constructed without obtaining permission, the same cannot be regularized. That the construction carried out by the petitioner is in violation of all the norms and requirements of the Municipal Corporation in respect of leaving set-back spaces, height of the building etc. That the petitioner has already constructed ground + three floors along with a pent house thereon without obtaining any permission. That the competent civil Courts have already dismissed the injunction applications of the petitioner.

07. Heard the learned counsel for the petitioner, learned standing counsel for respondents 1 and 2, and the learned counsel for the 3rd respondent.

08. This case has a chequered history. The 3rd respondent by way of a complaint brought to the notice of the respondent authorities as to the building constructions being made by the petitioner without obtaining any permission in the year 2017.

The sequence of events indicate that the petitioner, against the notices issued by the respondent-Corporation approached civil Court and initially was successful in obtaining an order of status-quo, which was vacated by the trial court, called in question before the 1st appellate Court in CMA No. 41 of 2018, though that Court also granted interim order, it ultimately dismissed the interlocutory application. Thereafter, the petitioner approached this Court and this Court granted interim order on 12-10-2018 and extended from time to time but ultimately interim order was not extended beyond 14-03-2019.

09. Learned Counsel for the petitioner strenuously contended that before taking action pursuant to the impugned notice issued under Section 636 of the Act, it is incumbent upon the

respondent authorities to dispose of the application filed by the petitioner under Section 455-A of the Act and without disposing of the same, it is not in the fitness of things to demolish the building in question. On the other hand, learned counsel for the 3rd respondent (petitioner in WP No.39290 of 2018) contended that the petitioner having failed to prove *prima facie* case and balance of convenience in his favour before the civil Courts and inasmuch as the building is constructed without obtaining municipal permission, the application of the petitioner made under Section 455-A of the Act cannot be considered and the illegal construction of the building has to be demolished.

10. Learned standing counsel appearing for the respondents 1 and 2 also submits that the respondents would take action to demolish the building which is constructed without obtaining any permission by following the process of law. Learned standing counsel also submits that Section 455-A of the Act applies to the deviations/variations in construction but not to constructions made without any permission.

11. It is to be seen that a plain reading of section 455-A of the Act does not indicate that it only contemplates

regularization of deviations/variations in construction with that of the sanctioned plan, and not of constructions already made without obtaining permission from the respondent-Corporation. 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. As a sequel to the disposal of writ petitions, miscellaneous petitions, if any, pending in the writ petitions also shall stand disposed of. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 28-11-2019
Note: CC by Tomorrow.
(B/O)
NRG

