

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 4169 and 5622 of 2020

COMMON ORDER:

Inasmuch as both these Writ Petitions are interlinked, with the consent of both the learned counsel, both these Writ Petitions are heard together and being disposed of by this common order.

In Writ Petition No.4169 of 2020, it is the case of petitioners, who are two in number, that they purchased plot Nos.265 and 280 covered by Survey Nos.575, 576, 577, 578, 579 and 580 situated at Pakalakunta, Alwal Gram Panchayat, Hyderabad (West) from M/s. Navabharath Cooperative House Building Society, who had developed the layout by acquiring the land from one Gulam Mohiuddin and 19 others, pattadars; that when respondent Nos.3 to 6 were proceeding with the construction in the aforesaid property, they filed representation dated 09.10.2019 before respondent No.1 – Greater Hyderabad Municipal Corporation (GHMC), Hyderabad, rep. by its Commissioner, objecting to the same and that questioning the inaction of respondent Nos.1 and 2 in acting upon their representation, they approached this Court by way of filing Writ Petition No.24819 of 2019 seeking to issue a direction to respondent No.1 to dispose of their objections in terms of Section

450 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), and this Court disposed of the said Writ Petition vide order dated 12.11.2019 with the direction to the respondent authorities to consider the petitioners' objections within a period of eight (8) weeks from the date of receipt thereof. It is also their case that pursuant to the said order of this Court, respondent No.2 – Zonal Commissioner, GHMC, Kukatpally Zone at Moosapet, Hyderabad, passed order dated 08.01.2020 directing respondent Nos.3 to 6 to stop the construction work in the subject property. Their grievance is that in spite of the said order, respondent Nos.3 to 6 are proceeding with the construction. In the circumstances, they filed Writ Petition No.4169 of 2020.

On 26.02.2020, while issuing notice to respondent Nos.3 to 6, in I.A.No.1 of 2020, this Court directed them not to make any further construction.

Respondent Nos.3 to 6 along with another filed Writ Petition No.5622 of 2020 questioning the proceedings dated 08.01.2020, 27.01.2020 and 29.02.2020 issued by respondent No.2 directing them to stop construction forthwith, in compliance with the aforesaid order of this Court.

For convenience sake, the parties hereinafter referred to as they are arrayed in Writ Petition No.4169 of 2020.

Essentially, it is the complaint of the petitioners that respondent Nos.3 to 6 obtained building permission by suppressing the facts, as such, they filed objections before respondent No.2 vide representation dated 09.10.2019. Thereafter, they filed Writ Petition No.24819 of 2019, which in turn, came to be disposed of by this Court vide order dated 12.11.2019 directing the Deputy Commissioner, GHMC, Alwal, Secunderabad, to consider their objections in terms of Section 450 of the Act. Pursuant to the said order, respondent No.2 passed order dated 08.01.2020 directing respondent Nos.3 to 6 to stop further construction work forthwith. Further, seeking implementation of the said order, the petitioners filed Writ Petition No. 4169 of 2020, wherein, this Court vide order dated 26.02.2020 issued an interim direction to respondent Nos.3 to 6 not to proceed with further construction.

It is the grievance of respondent Nos.3 to 6 that they were totally at loss on account of the unilateral orders dated 08.01.2020 and 29.02.2020 passed by respondent No.2. In fact, no notice was issued to them before passing such orders.

In terms of Section 450 of the Act, once building permission was granted in favour of an individual, before cancellation of the same, the ground under which an order could be passed under Section 450 of the Act is such permission was obtained on account any material misrepresentation or fraudulent statement of information furnished under Section 428 or 433 of the Act. It is implicit under Section 450 of the Act that conclusion be arrived at by the Commissioner with respect to the permission obtained by an individual by way of either misrepresentation or fraudulent statement. Without arriving at such definite conclusion, which can only be done after the enquiry is conducted, no final orders may be passed.

In the present case, it is to be noted that the order of this Court in Writ Petition No.4169 of 2020 was never to the effect that an opportunity need be given and an enquiry need be conducted, whereas, the order dated 12.11.2019 passed by this Court in Writ Petition No.24819 of 2019 is specific with regard to the fact that the Commissioner is required to issue notice to respondent Nos.3 to 6 and consider the objections of the petitioners by following due process.

In the facts of the present case, this Court does not hesitate to say that the respondent Commissioner has acted post-haste and without application of mind.

Learned counsel appearing for the petitioners fairly submits that an opportunity of hearing ought to have been given to respondent Nos.3 to 6 and an enquiry ought to have been conducted.

In those circumstances, these Writ Petitions are allowed and the impugned notices are set aside. Respondent Nos.1 and 2 are directed to issue notice to respondent Nos.3 to 6 calling for their explanation and pass appropriate orders in accordance with law, after taking into consideration the objections raised by the petitioners, within a period of four (4) weeks from the date of receipt of a copy of this order.

Miscellaneous applications, if any pending, shall also stand closed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

16th MARCH, 2020.

Note: issue c.c. in three (3) days.

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