

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION Nos.2498, 2609 and 4658 of 2021

COMMON ORDER:

Since the issue involved in these three writ petitions is one and the same, these three writ petitions are taken up together and are being disposed of by this common order.

2. W.P.No.2498 of 2021 is filed by the petitioner, wherein, the following prayer is made:

“...to issue Writ, Order, or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the Respondent Nos.1 to 4 herein in not considering the representation/complaint submitted by the petitioner dated 28.01.2021 and in not discharging their statutory duties for stopping of illegal and unauthorized construction made by the Respondent No.5 and 6 in Plot No 882, admeasuring 300 square yards, in Sy.No.148-155, Situated at Gopal Nagar Coopertative House Building Society Limited, Hydemagar Village, GHMC, Moosapet, Kukatpally Circle No 23, Kukatpally Mandal, Medchal=Malkajgiri District, as being illegal, arbitrary and unconstitutional apart from being contrary to the provisions of the Hyderabad Municipal Corporations Act, 1955 and consequently direct the respondent No.1 to 4 to demolish the illegal and unauthorized constructions undertaken by the Respondent No.5 and 6 in the petitioner's land and pass such other order or orders...”

3. W.P.No.2609 of 2021 is filed by the petitioner, wherein, the following prayer is made:

“...to issue Writ, Order, or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the Respondent Nos.1 to 4 herein in not considering the representation/complaint submitted by the petitioner dated 21.01.2021 and in not discharging their statutory duties for stopping of illegal and unauthorized construction made by the Respondent No.5 and 6 in Plot No 881, admeasuring 300 square yards, in Sy.No.148-155, Situated at Gopal Nagar Coopertative House Building Society Limited, Hydernagar Village, GHMC, Moosapet, Kukatpally Circle No 23, Kukatpally Mandal, Medchal-Malkajgiri District as being illegal, arbitrary and unconstitutional apart from being contrary to the provisions of the Hyderabad Municipal Corporations Act, 1955 and consequently direct the respondent No.1 to 4 to demolish the illegal and unauthorized constructions undertaken by the Respondent No.5 and 6 in the petitioner's land and pass such other order or orders...”

4. W.P.No.4658 of 2021 is filed by the petitioner, wherein, the following prayer is made:

“...to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the Demolition Notice bearing No.880 to 885/UC/TPS/W.No 114/CIR-23/KPZ/GHMC/2021, dated 22.02.2021, issued under Section 636 of the GHMC Act, 1955 by the third respondent and served on the petitioner on 23.02.2021, pursuant to the notices bearing No 880 to 885/UC/TPS/W.No.114/CIR-23/KPZ/GHMC/2021, dated 11.02.2021 and 880 to 882/UC/TPS/W.No.114/CIR-23/KPZ/GHMC/2021, dated 03.02.2021, issued under Sections 452(2) and 452(1) and 461(1) respectively of the GHMC Act, 1955 by the fourth respondent, both of them were served on the petitioner on 16.02.2021 in respect of the Plot Nos.884 and 885 of the Gopal Nagar Cooperative House Building Society Limited, situated in Sy.Nos.148 to 155 of Hydernagar Village, Kukatpally Mandal, Medchal-Malkajgiri District (erstwhile Balanagar Mandal, Ranga Reddy District) as arbitrary, illegal, malafide, without jurisdiction, violative of principles of natural justice and Articles 14, 19, 21, 31-A and 300A of the Constitution of India and consequently quash the same and further direct the Official respondents to consider the building permission application forthwith without reference to the Suits in O.S.Nos.493 and 494 of 2014 referred to in Short Fall Letters dated 24.08.2020 and 21.01.2021 in Lr.No.2/C24/06367/2020 and pass such other and further orders...”

5. Heard both sides. Perused the record.

6. The petitioner in W.P.No.4658 of 2021 and his GPA holder are unofficial respondent Nos.5 and 6 in W.P.Nos.2498 and 2609 of 2021. The petitioners in W.P.Nos.2609 and 2498 of 2021 are unofficial respondent Nos.5 and 6 in W.P.No.4658 of 2021. The material placed on record reveals that the petitioners in W.P.Nos.2498 and 2609 of 2021 have submitted representations, dated 28.01.2021 and 21.01.2021 respectively to the municipal authorities alleging illegal/unauthorised construction by the petitioner in W.P.No.4658 of 2021 in their plots. The petitioner in W.P.No.4658 of 2021 is seeking a direction to the municipal authorities to consider the building permission application submitted by him, without reference to the civil suits in O.S.Nos.493 and 494 of 2014, which were referred in Shortfall Notices, dated 24.08.2020 and 21.01.2021. This Court, vide order, dated 23.03.2021, in I.A.No.1 of 2021 in W.P.No.4658 of 2021, passed interim order, which reads as follows:

"The present application is filed by the petitioner herein seeking a direction to the official respondents to consider the application seeking building application filed by the petitioner without reference to the suits in O.S. Nos. 493 and 494 of 2014, referred to in the Shortfall notices, dated 24.08.2020 and 21.01.2021.

The learned counsel for the petitioner has taken this Court through the Shortfall notice, issued by the respondent No.4, wherein the building permission, sought by the petitioner, was rejected on the ground that two suits i.e., O.S. Nos. 493 and 494 of 2014 are pending. The learned counsel has taken this Court through the plaint copies in O.S. Nos. 493 and 494 of 2014 and has drawn the attention of this Court to the plaint schedule properties in both the suits. The properties described as suit schedule property in both the plaints relate to land in Sy. No. 161/1 and Sy. No. 160, situated at Hydernagar Village, Balanagar Mandal, R.R. District. Whereas, the building permission sought for by the petitioner is in respect of Plot Nos. 884 and 885, situated in Sy. Nos. 148, 149, 150, 151, 152, 153, 154 and 155, Baghameer Village, Kukatpally Mandal.

In view of the above, *prima facie* this Court is of the opinion that the official respondents without verifying the schedule of property involved in the abovementioned suits, have issued the Shortfall notice. In that view of the matter, the official respondents are directed to reconsider the application made by the petitioner without reference to the above two suits. However, it is made clear that before granting any building permission, the official respondents shall put the respondent Nos. 5 and 6 on notice and in case any objections are filed by them, the same shall be considered and the orders shall be passed on the building permission application made by the petitioner, strictly in accordance with the established procedure, within four weeks from the date of receipt of a copy of this order."

7. Pursuant to the above interim order of this Court, a hearing was conducted by the Commissioner, GHMC, on 04.09.2021, 18.09.2021 and 25.09.2021 and both the parties have submitted written arguments. Upon hearing the parties and considering the written arguments, the Commissioner, GHMC, ordered that building permission may be released in favour of the petitioner in W.P.No.4658 of 2021. Accordingly, GHMC issued building permit order in favour of petitioner in W.P.No.4658 of 2021, vide Permit No.2/C24/10118/2021, dated 05.11.2021.

8. Since the building permission in respect of the subject property was sanctioned to the petitioner in W.P.No.4658 of 2021 after putting the petitioners in W.P.Nos.2498 and 2609 of 2021 on

notice and after hearing them, their contention with regard to the alleged illegal/unauthorised construction by the petitioner in W.P.No.4658 of 2021 is unsustainable and they are not entitled for the relief sought by them in W.P.Nos.2498 and 2609 of 2021. With this observation, W.P.Nos.2498 and 2609 of 2021 are disposed of.

9. In the given facts and circumstances of the case, the Commissioner, GHMC, while according permission to issue building permit order vide order, dated 18.10.2021, observed as follows:

1. "Both the parties are having Registered Sale Deeds.
2. The Building permission was given basing on the prima facie of title and possession.
3. Both the parties are claiming same land on ground.
4. The disputes between both the parties are civil in nature.
5. GHMC is not competent Authority to decide title dispute.

As the observations and reasons stated above made following order:

- (i) Permission may be release subject to undertaking as issue is purely civil in nature.
- (ii) The parties can approach competent forum to redress their grievance.

The above observations and findings recorded by the Commissioner, GHMC, are in tune with law and cannot be faulted. It is also relevant to state that if, in a petition filed under Article 226 of the Constitution of India, complicated questions of fact which require a regular and full-fledged trial are involved, it is but prudent that the Court should refrain itself from entertaining such petition and relegate the party to the normal remedy to obtain redress in a suit.

10. As far as W.P.No.4658 of 2021 is concerned, since building permission was granted to the petitioner in accordance with law and constructions made thereon are in tune with the permission

and since construction activity is going on, the petitioner is entitled to proceed with the construction in tune with the building permission, dated 05.11.2021. Consequently, the show-cause notices, dated 03.02.2021 and 11.02.2021, issued under Sections 452(1) and 461(1) of HMC Act and Section 452(2) of HMC Act respectively and the demolition notice, dated 22.02.2021, issued under Section 636 of GHMC Act, to the petitioner in W.P.No.4658 of 2021 are unsustainable and are hereby set aside. W.P.No.4658 of 2021 is disposed of accordingly.

Miscellaneous petitions, if any, pending in these three writ petitions, shall stand closed. There shall be no order as to costs.

28th December, 2021
Bvv

Dr. SHAMEEM AKTHER, J