

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION Nos.30244 and 34379 of 2021

COMMON ORDER:

Since the petitioner and the facts and issues involved in these Writ Petitions are identical, both the Writ Petitions are taken up together and are being disposed of by way of this common order.

2. W.P.No.30244 of 2021, under Article 226 of the Constitution of India, 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 or any other appropriate writ; (i) declare the action of the Respondent-Corporation in issuing orders vide Notice/Intimation Roc. No.UC/05/W.No.7/GWMC/TP/CIR-II/2021 dated 20.11.2021 directing demolition of the house property at r/o H.No.6-4-47, Brahmanawada, Ward No.7, Hanamkonda District as illegal and arbitrary; (ii) and consequently restrain the Respondent-Corporation from taking any steps of demolition of the property H.No.6-4-47, Brahmanawada, Ward No.7, Hanamkonda District; (iii) declare that the Petitioner is eligible for construction of stilt + 4 upper floors in pursuance of Telangana Municipalities Act, 2019 (iv) pass such order or other orders...”

3. W.P.No.34379 of 2021, under Article 226 of the Constitution of India, 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 or any other appropriate writ;

- i. declare the action of the Respondents in not passing the orders against the representation dated:06.12.2021 for permission for stilt + 4 upper floors for the house property situated at H.No.6-4-47, Brahmanawada, Ward No.7, Hanamkonda District; and
- ii. consequently, restrain the Respondent/Corporation from taking any steps of demolition of the property H.No.6-4-47, Brahmanawada, Ward No.7, Hanamkonda District; and

- iii. declare that the Petitioner is eligible for construction of stilt + 4 upper floors in pursuance of Telangana Municipalities Act, 2019; and
- iv. direct the Respondents to consider the representation dated:06.12.2021 and regularize the 4th upper floor; and
- v. pass such order or other orders ...”

4. Heard Sri G.Vidyasagar, learned Senior Counsel representing Sri G. Sai Prasen, learned counsel for the petitioner; learned Government Pleader for Municipal Administration and Urban Development appearing for respondent No.1; Ms. P. Lakshmi, learned Standing Counsel for GWMC appearing for respondent Nos.2 and 3 and perused the record.

5. Learned senior counsel appearing for the petitioner in both these writ petitions would submit that the petitioner is the owner and possessor of the subject property bearing H.No.6-4-47, Ward No.7, Brahmanawada, Hanamkonda, Warangal District, having purchased the same *vide* Sale Deed bearing document No.6787 of 2018, dated 29.03.2018, registered in the office of the Sub-Registrar, Warangal. On 04.06.2018, the petitioner had applied for permission to construct stilt + 3 upper floors over the subject property. The petitioner was granted permission vide Permit No.3006/13139/W39/2018, dated 14.06.2019, and pursuant to the same, the petitioner has constructed stilt + 3 upper floors in the subject property. However, on verification of Telangana Building Permit Rules, 2012, the petitioner came to know that in view of the total extent of subject land, she is eligible to construct stilt + 4 upper floors and accordingly, the petitioner made an online application on 20.06.2019 for grant of permission to construct 4th

floor in the subject property and paid the requisite charges etc. The said application has not been disposed of yet by the GWMC authorities. Meanwhile, the petitioner has constructed 4th floor and pent house. While so, a notice, dated 29.10.2021, was issued by the respondent No.3, stating that they have received a letter from the Institution of Lokayukta to take action against the illegal constructions in the subject property and directed the petitioner to submit the documents mentioned therein within seven days. The petitioner submitted reply to the said notice on 05.11.2021. In spite of the same, the impugned notice, dated 20.11.2021, was issued directing the petitioner to remove the unauthorised construction/deviated portion of the subject property. Thereafter, the petitioner made a representation, dated 06.12.2021, to the 2nd respondent, requesting to regularise the 4th upper floor in view of permissibility as per Telangana Building Rules, 2012 and to revoke the orders of demolition, dated 20.11.2021. So far, neither permission is granted to construct 4th floor nor the representation, dated 06.12.2021, is disposed of by the respondent authorities. Learned Senior Counsel further submitted that before taking steps for demolishing the 4th floor in the subject property, it is incumbent upon the respondent authorities to examine the building permission application, dated 20.06.2019, as well as the representation, dated 06.12.2021, and pass necessary orders thereon. Learned Senior Counsel has requested this Court that till the online application, dated 20.06.2019, and the representation, dated 06.12.2021, made by the petitioner are disposed of, the 4th floor constructed over the subject property be protected.

6. On the other hand, the learned Standing Counsel for GWMC appearing for respondent Nos.2 and 3, would submit that one C. Raju, who is the neighbour of the petitioner, had made a complaint to the Lokayukta with regard to the construction of 4th floor as well as pent house in the subject property. The Lokayukta has appointed an officer to inspect the same and submit report. Thereafter, the Lokayukta directed the Commissioner, Greater Warangal Municipal Corporation, to take necessary action in this matter and file a compliance report. Further, right now, there is no provision under Telangana State Municipalities Act, 2019, for regularization of the 4th floor constructed in the subject property. Moreover, a pent house was also constructed over the unauthorised 4th floor in the subject property, which is illegal.

7. At this stage, learned Senior Counsel appearing for the petitioner would submit that the petitioner is ready to demolish the pent house within one week from today and report compliance to this Court. The said submission made by the learned Senior Counsel appearing for the petitioner is placed on record.

8. It is pertinent to state that there is no denial with regard to the petitioner making an online application on 20.06.2019 for grant of permission to construct 4th floor in the subject property. Further, there is also no denial with regard to the petitioner submitting representation, dated 06.12.2021, to respondent No.2 requesting to regularise the 4th upper floor in view of permissibility as per Telangana Building Rules, 2012 and to revoke the orders of demolition, dated 20.11.2021. The aspect as to whether there are

governing regulations to regularise the construction of 4th floor in the subject property or not is required to be examined by the respondent authorities and thereafter, necessary orders are required to be passed. Till date, there is neither denial nor approval of the online application, dated 20.06.2019, made by the petitioner in relation to the grant of permission to construct 4th floor in the subject property. By this time, the respondent authorities ought to have disposed of the online application, dated 20.06.2019 of the petitioner. Instead of doing so, they served impugned notice/intimation to be petitioner directing him to remove the unauthorized construction made by him failing which, action would be initiated against him under Sections 178 & 180(1) of Telangana Municipalities Act, 2019 besides launching prosecution against him.

9. Here, it is apt to state that a writ Court is basically a Court of equity. It exercises equitable jurisdiction. A Court of equity, when exercising its equitable jurisdiction, must act so as to promote equity and fair play. Though the scope and power of a writ Court to undertake judicial review of administrative actions is very wide, but however, its exercise is subject to self-imposed restraint. It is the bounden duty of the writ Court to ensure justice and equity. The High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can take cognizance of the entire facts and circumstances of the case and pass appropriate orders, in order to do complete and substantial justice to the parties; and this extraordinary jurisdiction is normally exercisable, keeping in mind

the principles of equity. The concept of justice cannot be restricted to a strait-jacket formula, but it has wider amplitude. A writ Court, in all fairness, should come to the rescue of a person who seeks justice against an administrative caprice and its *ipse dixit*; and in doing so, it is called upon to strike a balance to adjust the equities between the parties. Judicial quest is to strike just balance between administrative discretion as per Government policy and the need of fairness.

10. In the instant case, to strike just balance between the competing interests and in the interest of justice, equity and fair play, this Court deems it appropriate to pass the following order. In the given circumstances of the case, in the interest of justice, it is not appropriate to say or record any finding with regard to the orders passed by Lokayukta.

“The respondent authorities are directed to dispose of the online application, dated 20.06.2019, as well as the representation, dated 06.12.2021, made by the petitioner, in strict accordance with law, within a period of two (2) months from the date of receipt of a copy of this order. Till then, the impugned Notice/Intimation Roc.No.UC/05/W.No.7/GWMC/TP/CIR-II/2021, dated 20.11.2021, shall remain stayed. In view of the undertaking given by the learned senior counsel appearing for the petitioner in relation to demolition of pent house constructed in the subject property, the petitioner shall demolish the pent house constructed in the subject property within a period of one week from today and report compliance of the same to this Court within a period of one

week thereafter. In case of failure of demolition of pent house as agreed by the petitioner within the stipulated time, the respondent authorities shall demolish the same immediately and report compliance to this Court."

11. With the above observations/directions, both these Writ Petitions are disposed of.

Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed. There shall be no order as to costs.

17th December, 2021
MD/BVV

Dr. SHAMEEM AKTHER, J