

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

W.A.No.484 of 2022 & W.P.No.11953 of 2022

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice C.V.Bhaskar Reddy)*

This writ appeal is directed against the order passed in W.P.No.11953 of 2022 dated 08.03.2022, whereby and whereunder the learned Single Judge disposed of the writ petition directing respondent No.3/Deputy Commissioner, GHMC, to act upon the representation of the writ petitioner/respondent No.1 herein.

2. The prayer sought in the writ petition was to issue a Writ of Mandamus declaring the action of the respondent Nos.1 to 3 in the writ petition/respondent Nos.2 to 4 herein in not taking any action for providing protection to the life and property as envisaged under Sections 24 and 25 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rule 21 of the T.S. Maintenance of Parents and Senior Citizens Rules, 2011 in spite of complaint dated 22.02.2022 to restore the

possession of the House bearing H.No.1-91/1, admeasuring 225 square yards in Ground Floor, situated at Ramachandrapuram Village and Mandal, GHMC Ramachandrapuram Circle, Ranga Reddy District, as illegal and arbitrary and to consequently direct respondent Nos.1 to 3 in the writ petition/respondent Nos.2 to 4 herein to restore the possession of the subject property forthwith.

3. The appellant is respondent No.4 in the writ petition, respondent No.1 herein is the writ petitioner and respondent Nos.2 to 4 herein are respondent Nos.1 to 3 in the writ petition.

4. The case of writ petitioner is that he is the absolute owner and possessor of House No.1-91/1 having purchased the same through a registered sale deed bearing document No.15267 of 2018 dated 13.04.2018 and adjacent to the said house, the House No.1-91/2 was purchased by Ms. Anwari Begum (appellant) vide registered document No.15268 of 2018 dated 13.04.2018. The document of the appellant is showing the extent as 160 square yards and the document of respondent No.1

is showing the extent as 223.75 square yards. The appellant obtained permission for construction of house in an extent of 160 square yards and constructed the house in 240 square yards contrary to the sanction plan. As such respondent No.1 has made a complaint to respondent Nos.2 to 4 herein to inspect the site of construction and to regulate the construction in accordance with the sanction plan. As the authorities failed to regulate the construction and supervise the same and as the appellant was proceeding with the illegal and unauthorised construction, respondent No.1 herein was constrained to file the writ petition.

5. The writ petition came to be disposed of on 08.03.2022, at the stage of admission, by directing respondent Nos.2 to 4 herein to consider the representation of respondent No.1 herein and after making physical verification of the site, to take action in accordance with law, if there are any deviations found in the construction made by the appellant and the entire exercise shall be completed within a period of two months from the date of receipt of a copy of the order and steps

shall be taken in accordance with law after issuing notice to the appellant as well as respondent No.1 herein.

6. Respondent No.4 in the writ petition has filed the present writ appeal stating that the learned Single Judge without issuing any notice or without affording her an opportunity of hearing, has proceeded to dispose of the writ petition directing respondent Nos.1 to 3 therein/respondent Nos.2 to 4 herein to take action for removal of the illegal construction and in fact as on the date of filing of the writ petition, there are civil suits pending with respect to the subject property. The respondent No.1 herein has not stated about the pendency of the civil suits in the affidavit filed in support of the writ petition and as such, it amounts to approaching the Court with unclean hands and the writ petition deserves to be dismissed in *limine*.

7. We have heard Mr. K. Jamali, learned counsel for the appellant; Mr. R.S. Sravan Kumar, learned counsel appearing for respondent No.1; and Mr. Chatla Madhu, learned Standing Counsel for Greater Hyderabad

Municipal Corporation for respondent Nos.2 to 4 and perused the record.

8. It is seen that the writ petition has been filed seeking a direction to respondent Nos.2 to 4 herein to act upon the representation of respondent No.1 herein dated 23.02.2022 for removal of illegal and unauthorised constructions alleged to have been made by the appellant and the writ petition came to be disposed of by the learned Single Judge without issuing notice to the appellant.

9. Admittedly, respondent No.1 (writ petitioner) along with two others has instituted a suit vide O.S.No.1217 of 2021 on the file of the Principal Civil Judge at Sangareddy claiming that during the lifetime of their parents i.e., Sayeed Hussain and Saleema Bee, there was a family settlement among their parents and their offspring, wherein the property of plot bearing MCH door Nos.1-91/1 part, Old R.C.Puram Village and Mandal, Medak District, admeasuring 607 square yards, was exclusively given to three daughters, while the remaining property devolved amongst the parents and the three

sons; accordingly sale deeds were executed; the appellant who purchased open plot bearing No.1-91/1 part admeasuring 160 square yards through registered sale deed vide document No.8872/2003 has encroached/trespassed to an extent of 80 square yards; and therefore sought for a decree against the defendant with a direction to move back into the extent of land that is earmarked as per the defendant's sale deed/family settlement as admitted in the evidence/list of documents filed in O.S.No.331 of 2019. The fact of filing the said suit was not disclosed in the affidavit filed in support of the writ petition. Further, even before institution of the suit by the respondent No.1 herein, the appellant also instituted a suit against the respondent No.1 herein and others vide O.S.No.331 of 2019 on the file of the Principal Junior Civil Judge at Sangareddy in respect of the very same subject property and seeking to grant permanent injunction. Thus as on the date of filing of the writ petition, both the suits are pending trial on the file of the respective Courts.

10. While things stood thus, the respondent No.1 herein submitted a representation dated 23.02.2022 on the file of respondent No.3 alleging that the appellant obtained permission vide document No.3/C22/12886/2020 for the premises No.1-91/1 and transgressed into his property and proceeded with the illegal constructions. In the writ affidavit, except stating that the appellant has illegally proceeded with the construction encroaching into the land of the writ petitioner/respondent No.1, nothing has been stated and in the guise of making said representation and during the pendency of the civil suits, the writ petitioner/respondent No.1 herein is inviting the authorities to determine right, title and extent of the property encroached by the appellant.

11. The municipal authorities have not been entrusted with the functions and duties to determine whether a particular individual's occupation of the land is legal or illegal. Limited functions are entrusted to the municipal authorities under the Greater Hyderabad Municipal Corporation Act, 1955 (briefly 'the Act', hereinafter) with

respect to regulate development of zones and wards and issue construction permissions under the provisions of the Act.

12. If the allegation of the respondent No.1 that the appellant unauthorisedly occupied his land is taken to be true and even assuming that the authorities are not taking any action against the alleged illegal construction being made by the appellant, the remedy of the respondent No.1 herein with respect to illegal encroachment is not the writ petition under Article 226 of the Constitution of India but he has to approach the competent Civil Court and obtain necessary orders of mandatory injunction.

13. In the instant case, the respondent No.1 herein has not disclosed the fact of filing of the suits. Thus he has not come to this Court with clean hands which amounts to sheer abuse of the process of law. Further, it is well settled that the jurisdiction exercised by the Court under Article 226 of the Constitution of India is extraordinary and equitable and it is imperative that the litigant approaching this Court is bound to come with clean

hands and state all the facts which are relevant to the litigation before the Court. Withholding of any relevant material would amount to playing fraud upon the Court as well as the respondent, which cannot be countenanced.

14. For the aforesaid reasons and in view of the pendency of the civil litigation, we are not inclined to entertain the writ appeal as well the writ petition. Those are accordingly dismissed leaving it open to the parties to agitate all their claims in the pending civil suits. It is however made clear that the civil suits shall be decided on their own merits, in accordance with law, uninfluenced by the observations made in this order.

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

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

27.09.2022
JSU