

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY
CITY CIVIL COURT APPEAL NO.50 OF 2002

JUDGMENT:

The unsuccessful defendant in O.S.No.1488 of 1999 on the file of the learned V Senior Civil Judge, City Civil Courts, Hyderabad has filed this appeal suit assailing the common judgment dated 11.10.2001 in O.S.Nos.123 of 1998 and 1488 of 1999. These two suits were clubbed together as the parties and property involved in both the suits were one and the same, joint trial was conducted and both the suits were disposed of through the common judgment.

2. The Original Suit in O.S.No.123 of 1998 was filed by the plaintiff for declaration of the notice issued under Section 452 of Hyderabad Municipal Corporation Act (HMC Act) (for short 'the Act'), dated 03.02.1998 as illegal, void and without jurisdiction and consequential perpetual injunction restraining the defendant and their men from interfering or demolishing the property bearing H.No.4-1-833 and 4-1-833/1 to 5 admeasuring 6000 Sq.Yards, situated at Abids, Hyderabad (hereinafter referred as 'suit

schedule property'). Whereas, OS No.1488 of 1999 was filed by the very same plaintiff against Municipal Corporation of Hyderabad (for short 'MCH') for perpetual injunction restraining the MCH from interfering or demolishing the suit schedule property consisting of cellar, lower and upper ground floors plus upper four floors. Both the suits were clubbed together and common trial was conducted. The trial Court has decreed both the suits against the MCH declaring that the notice under Section 452 of the Act is diluted in view of relief sought under Building Regularization Scheme (for short 'BRC') and collection of regularization fee and perpetual injunction was granted restraining the defendant Corporation and its employees from demolishing the structures existing in the suit schedule property.

3. Feeling aggrieved by the said common judgment, the MCH has filed this appeal without assailing the common judgment and decree in O.S.No.123 of 1998 suit for declaration to declare the notice under Section 452 of the Act as null and void and not binding and also for consequential injunction.

Pleadings of plaint and written statement :

4. The plaintiff in O.S.No.123 of 1998 has filed suit for declaration that the notice issued under Section 452 of the Act against the plaintiff is null and void and without jurisdiction and for consequential injunction restraining the officials of the MCH from demolishing the structures in the suit schedule property, whereas O.S.No.1488 of 1999 is filed for bare injunction to restrain the defendant Corporation from demolishing the existing building consisting of cellar, lower and upper ground floors plus upper four floors.

5. The main averments in plaint in O.S.No.1488 of 1999 are that plaintiff is the owner and possessor of suit schedule property and submitted an application under Section 428 and 433 of the Act to the defendant Corporation for sanction of cellar, lower and upper ground floors plus three floors and the defendant has accorded permission vide permission No.236/9/89 dated 27.04.1989. The plaintiff, after dismantling the old constructions, raised the new structures as per the plan and permission during the validity of the permission.

When the construction was in progress, the defendant officials visited and inspected the constructions, did not raise any objection and that the constructions are in accordance with by-laws, building zoning regulations and provisions of HMC Act. After completion of construction the plaintiff submitted proposals for proposed fourth floor to be constructed on the existing third floor and submitted plans on 02.07.1999, the Corporation has collected permit fee of Rs.2,72,688/- together with advance fee and failed to communicate either approval or disapproval of the plan within thirty days, as such under the deeming provisions of the Act, the plaintiff has issued a notice under Section 440 of the Act informing the commencement of construction w.e.f. 06.08.1999. However, all of a sudden on 17.11.1999 the defendant officials came to the suit site, threatened to demolish the construction without issuing required notices under Section 461, 452 and 636 of the Act though the plaintiff has not contravened any of the provisions of Hyderabad Municipal Corporation Act. As such, in view of urgency without complying Section 685 of the Act, the plaintiff has filed the suit for perpetual injunction.

6. The defendant Corporation has filed written statement. The main averments of the written statement are that the suit is not maintainable for non-compliance of mandatory requirement under Section 685 of the Act. Defendants admits that permission No.236/9 dated 27.04.1989 was issued insisting upon certain terms and conditions for construction of cellar, ground, mezzanine floor and upper three floors in the suit schedule premises, but the plaintiff commenced the construction of complex in the year 1998 after expiry of the permission period on which, the defendant has issued a notice dated 03.02.1998 under Section 452 of the Act to show cause why the action should be taken for unauthorized and illegal constructions. But the plaintiff did not give any explanation, thereby the defendant has issued notice under Section 636 of the Act directing the plaintiff for removal of unauthorized constructions, thereafter the plaintiff has filed O.S.No.123 of 1998 before the IV Senior Civil Judge, City Civil Court, Hyderabad for obtaining ex-parte injunction. In-fact as per the Building By-laws and Zoning Tegulations, 1981, the validity of the permission is only three years and the

commencement of the construction should be within one year from the date of sanction, duly giving notice of commencement of construction under Section 440 of the Act; whereas, the plaintiff under the grab of ex-parte injunction order proceeded with construction, erected RCC frame, structure for cellar, lower and upper ground floors and three upper floors changing the shape and pattern in deviation of sanction plan. In view of filing of the earlier suit in O.S.No.123 of 1998, the present suit in O.S.No.1488 of 1999 has to be stayed as per Section 10 of CPC. The permission for construction of 4th floor was refused as per the letter dated 24.07.1999 and the plans were also returned on nine grounds. The suit is not maintainable.

Issues:

7. Basing on the above pleadings, the trial Court has framed the following issues in O.S.No.1488 of 1999:

1) Whether the plaintiff is entitled for perpetual injunction restraining the defendant, his men, subordinates etc., from interfering or demolishing the suit schedule property, as prayed for?

2) To what relief?

Evidence and findings:

8. During trial, to substantiate the plaintiff's claim in both the suits, as stated supra, PWs.1 and 2 are examined and Exs.A1 to A14 documents are marked. Whereas on behalf of defendant Corporation DWs.1 to 3 are examined, Exs.B1 to B11 documents are marked. On appreciation of oral and documentary evidence, the trial Court has decreed both the suits, as prayed for, declaring the said notice under Section 452 of the Act as diluted in view of the relief sought for under BRS with a liberty to the defendant Corporation to consider the case of the plaintiff in accordance with the provisions of the Act, building by-laws, zoning regulations and a perpetual injunction was also granted against the defendant till the process is finalized. Equally O.S.No1488 of 1999 was also decreed granting perpetual injunction restraining the defendant Corporation from demolishing the structures existing in the suit schedule property with a liberty to the Corporation to consider the case of the plaintiff under BRS and with an observation that if the process of BRS fails, the Corporation

is entitled to proceed and initiate the action against the plaintiff's constructions by due process of law.

9. Feeling aggrieved by the common judgment dated 11.10.2001 in both the suits in O.S.No.123 of 1998 and 1448 of 1999 the defendant Corporation has chosen to file appeal only in O.S.No.1448 of 1999 without assailing the findings recorded in the declaration suit in O.S.No.123 of 1998.

10. Heard the learned Standing Counsel for the appellant/defendant/Corporation and the learned counsel for the respondent/plaintiff. The submissions made on either side have received due consideration of this Court.

11. In the light of rival contentions and in the facts and circumstances of the case as the appellant did not chose to challenge the judgment and decree in the declaration suit in O.S.No.123 of 1998 in the common judgment and only assailed the injunction suit in O.S.No.1488 of 1999, the following, the following points would arise for consideration.

(i) Whether the finality attained in O.S.No.123 of 1998 in the connected suit due to non-filing of the appeal precludes the defendant/Corporation from proceeding with the present appeal?

(ii) Whether the plaintiff is entitled for perpetual injunction as prayed for?

(iii) Whether the impugned common judgment dated 01.11.2001 in O.S.No.123 of 1998 and 1488 of 1999 is sustainable?

12. For the sake of convenience, the parties hereinafter referred as plaintiff and defendant as arrayed in original suit.

Point Nos.(i) to (iii):

To avoid repetition and for the sake of brevity, all these point Nos.(i) to (iii) are answered together as under:

13. Admittedly, the plaintiff herein has initially filed O.S.No.123 of 1998, a suit for declaration to declare the notice issued under Section 452 of the Act dated 03.02.1998 by the defendant as illegal, void and without jurisdiction and for consequential injunction. Again the plaintiff has filed second suit in O.S.No.1488 of 1999 for

injunction simpliciter restraining the men of defendant Corporation from demolishing the existing structures over the suit schedule property. The plaintiff has also obtained permission for construction vide permit No.236/9 of 1989 dated 27.03.1989. The specific case of the plaintiff is that as per the terms and conditions of the permission, he has demolished existing structures, constructed new structures and right from commencement of the construction, till the completion, the defendant officials visited the suit site, did not raise any objections. However, all of a sudden on 03.02.1998, the defendant has issued a notice under Section 452 of the Act with false and baseless allegations and initiated action under Section 454 of the Act. Whereas, the case of the defendant Corporation is that having obtained permission the plaintiff failed to raise structures as per the approved plan within the stipulated period as per the building by-laws and zoning regulations, raised structures only after three years period and as such notice under Section 452 of the Act was rightly issued on 03.02.1998 directing the plaintiff to remove the unauthorized structures. But the plaintiff having obtained

temporary injunction vide orders in I.A.192 of 1998 in O.S.No.153 of 1998 completed the entire construction. During pendency of that suit, the present suit in O.S.No.1488 of 1999 was filed for injunction simpliciter restraining the defendant officials from removal of the existing structures.

14. To substantiate their case, on behalf of plaintiff he himself got examined as PW1 and also examined another witness as PW2. In his entire evidence as PW1 the plaintiff has supported the averments in the plaint. In the cross-examination PW1 stated that he has not raised any constructions subsequent to obtaining orders in O.S.No.1488 of 1999. He has received notice under Ex.B1 and High Court gave a direction to stop construction under Ex.B2 but thereafter it was vacated. PW1 admitted Ex.B3 notice. When a specific question was posed to him stating that whether he is prepared for getting regularization of deviations or illegal structures, the witness has answered that there is no deviation and there is no illegal construction and he has constructed strictly confining to the plan submitted, as per the deeming provisions and he

has not made any structures towards rear side of the building.

15. PW2 is the watchman of the premises, he has categorically stated that entire construction was completed in the year 1992 itself, there is a cellar and four upper floors.

16. On behalf of defendant Corporation their Town Planning Supervisor is examined as DW1. In his evidence in cross-examination, DW1 has admitted that he is not aware when the construction of third floor was noticed by the Municipal Authorities but the 4th floor construction was noticed on 08.03.2000. He has also admitted the correspondence, receipt of application for regularization of unauthorized structures under Exs.A12 to A14 and payment of permission fee. DW1 has clearly admitted when a question was posed to him stating that Ex.B7 is filed showing that on behalf of the plaintiff it was received and apart from it, they have not filed anything and not aware whether Ex.B7 is received by the plaintiff or not.

17. Be it stated that the plaintiff is denying /disputing the signatures found on Ex.B7 wherein it is only found as with a signature C/o.VV Associates. Be it stated that as per the pleadings in the written statement revised plans were returned on 24.07.1999 whereas Ex.B6 is dated 27.07.1999 and the acknowledgement is obtained under Ex.B7 on 25.07.1999 creating reasonable doubt as to service of such notice Ex.B6 and obtaining acknowledgment under Ex.B7.

18. DW2 is a LDC in Town Planning Section of the defendant Corporation and in-charge of maintenance of Ex.B7 register. He has stated that he was put in-charge of outward register Ex.B7 on 25.07.1999 and the letter referred in Ex.B7 is dated 28.07.1999 pertains to Ajit Patel and others and also admitted that they have not given any authorization to Ashok Kumar to receive the reference letter under Ex.B7, which does not contain the signatures of Ajit Patel.

19. DW3 is the Assistant Town Planning Officer. He has supported the evidence of DW1. In the cross-

examination DW3 stated that as per Exs.A12 and A13 amount was paid for regularization of the premises and it was credited to the account of defendant Corporation and as per Ex.A14 an amount of Rs.1,50,000/- shown as DD is credited towards regularization.

20. On a careful appreciation of the above oral and documentary evidence, it is crystal clear that though the defendant Corporation has claimed that after expiry of the permission period the plaintiff has raised structures, there is no such cogent, convincing or acceptable evidence to that effect. On the other hand, oral evidence of PWs.1 and 2 supported by the admissions made by DW1 including the contents of Ex.A11 to A14 would establish that the construction was made in accordance with the plan and during the relevant period the officials of defendant Corporation visited the site. But suddenly a notice under Section 452 was issued. It is also further established that for construction of 4th floor over upper third floor as required under Section 428 to 438 of the Act permission fee was paid with advance fee and the defendant

Corporation has failed to communicate the approval or disapproval within the stipulated period.

21. Learned Standing Counsel of the defendant Corporation would submit that as per the building by-laws and zonal regulations the permission is valid for 5 years in case of high-rise and group development schemes and three years in case of non-high-rise buildings subject to the condition that the construction shall be commenced within eighteen months. The permission can be revalidated for another two years on payment of building permit fee but in the case on hand no such additional fee is paid and the trial Court erred in arriving at a conclusion that plaintiff is entitled for perpetual injunction.

22. Per contra, learned counsel for the respondent /plaintiff would submit that the appeal suit is not maintainable, the appellant has only filed this appeal assailing the judgment and decree in O.S.No.1488 of 1999 leaving the judgment and decree in O.S.No.123 of 1998 as such, the suit for declaration of the impugned notice dated 03.02.1998 vide O.S.No.123 of 1998 is decreed. The

defendant Corporation is suffering the said decree through the common judgment and it cannot assail another judgment, relied on the principles laid in **Premier Tyres Limited Vs.Kerala State Road Transport Corporation**¹. In paragraph 6 of the said judgment the Hon'ble Supreme Court has concluded that the finality of the proceedings recorded in the connected suit due to non-filing of the appeal precluded the Court from proceeding with the appeal in another suit.

23. In the instant case also the defendant Corporation did not chose to challenge the judgment and decree in declaration suit in O.S.No.123 of 1998 arising out of the common judgment dated 11.10.2001 and filed this appeal only in O.S.No.1488 of 1999 suit for injunction simpliciter as such the defendant is precluded from assailing the correctness or otherwise of the judgment impugned in the absence of questioning the legality and validity of the judgment in O.S.No.123 of 1998.

24. In fact, the plaintiff with oral and documentary evidence is able to establish that the construction of the

¹ AIR 1993 SC 1202

suit schedule property was made within the stipulated period as per the permit No.236/9/1989 dated 27.04.1989 and it is purely for raising 4th floor the plaintiff has approached the defendant Corporation and paid permission fee of Rs.2,72,688/- waited for 30 days, thereafter, as per the deeming provisions, on issuing required notice, started construction w.e.f. 06.08.1999, completed the same.

25. Though it is alleged by the defendant that on obtaining the temporary injunction as per the orders in I.A.No.192 of 1998 in O.S.No.123 of 1998 the plaintiff has completed the construction, the defendant Corporation has failed to establish the same. Further, the defendant Corporation is suffering the judgment and decree in the comprehensive declaration suit in O.S.No.123 of 1998 as such, it cannot raise any such objection in this appeal suit.

26. In that view of the matter, in the facts and circumstances of the case, I do not find any irregularity or infirmity in appreciation of the oral and documentary evidence available on record and that the trial Court has

rightly concluded that the plaintiff is entitled for perpetual injunction against the defendant restraining the defendant Corporation from demolishing the existing structures over the suit schedule property with a liberty to consider the case of the plaintiff under BRS. As such, the point Nos.(i) to (iii) are answered against the appellant and in favour of respondent holding that the findings of the trial Court does not warrant any interference by this Court and the judgment impugned is sustained.

27. In the result, this appeal is dismissed confirming the common judgment and decree dated 11.10.2001 in O.S.No.1488 of 1999 on the file of the learned V Senior Civil Judge, City Civil Courts, Hyderabad in its entirety.

However, in the circumstances of the case, there shall be no order as to the costs. As a sequel, miscellaneous applications, if any pending, shall stands closed.

A.VENKATESWHARA REDDY, J

05-12-2022
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