
(2022) 12 TEL CK 0005

In the Telangana High Court

Case No : Writ Petition No. 25508 Of 2018, 31472 Of 2021

B.Anil

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 TEL CK 0005

Hon'ble Judges : Lalitha Kanneganti, J

Bench : Single Bench

Advocate : Shital Bhatia

Final Decision : Disposed Of

Judgement

W.P.No. 25508 of 2018

This Writ Petition is filed seeking the following relief:

" to issue a writ of mandamus or any other appropriate writ or order or direction declaring the inaction of Respondent Nos. 2 to 4 as arbitrary, illegal against the law, unconstitutional and contrary to the provisions of Greater Hyderabad Municipal Corporation Act, 1955 inter alia and consequently direct the respondent authorities to demolish the unauthorised and illegal construction made by Respondent No.5 and to pass such other or further orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. Learned counsel for the petitioner Ms. Katta Sravya submits that when the petitioner is searching for suitable premises through intermediaries, the 5th respondent approached and offered him to lease out major portion of the 5th floor at Diamond Towers to the extent of 2700 square feet. Upon being impressed with the location and on the possibility of running / providing educational and consulting services, they have put-forth a requirement that the lease shall tentatively commence from 15.12.2014 and the insured premises being provided is fully functional and fit for use for business purpose. Thereupon

the petitioner and the 5th respondent negotiated and took on lease the said premises under a registered lease agreement on 28.11.2014 with the mutual terms referred thereto. Thereafter, the 5th respondent collected Rs. 3 lacs as deposit without interest by falsely misleading the petitioner regarding the true nature of the status of the said leased premises. Later, the 5th respondent failed to provide and hand over the premises as per the commitment. The petitioner incurred several lakhs towards improvements, infrastructure, equipment, furniture and got it ready and thus had successfully commenced the educational services. Learned counsel submits that The 5th respondent used to visit the service centre to oversee the improvements being done with the petitioner's money and having observed the successful running of the service centre, had cast an evil eye to join in the study centre and solicited to admit him as a partner in the centre but the said proposal was not accepted by the petitioner. Thereafter, the 5th respondent started pressurising the petitioner to hand over the premises with all infrastructure. The 5th respondent has committed several offences and basing on a complaint, Crime Nos. 380 of 2015, 834 of 2015, 602 of 2015 and 734 of 2015 were registered and as a counter blast to that, the 5th respondent filed O.S.No. 1035 of 2015 and O.S.No. 907 of 2016 for eviction, arrears of rent and mesne profits. Thereafter, the petitioner has filed O.S. No. 550 of 2016 for injunction and obtained an ad interim injunction order on 31.05.2016. The 5th respondent intentionally did not pay heed to the Court order by indulging in acts and denied the petitioner the right to enjoy the premises, by preventing the ingress and egress, removal of access to bathrooms, disconnection of lift / elevator services, disruption of water and parking facilities and allowing wild and undomesticated animals onto the premises. The 5th respondent also started running an illegal hookah bar above the said premises which is meant for educational services and he has gone to the extent of disconnecting the electricity and other permanent utilities required for the premises. The petitioner filed I.A.No. 240 of 2016 in O.S.No. 550 of 2016 for disobedience of the orders of the Court. It is submitted that thereafter, the petitioner has approached the respondent municipal corporation, then he has come to know that the 5th respondent is playing fraud upon the Courts as well as GHMC and in the process, committed numerous transgressions of law especially offences under IPC relating to forgery, false affidavits. When the sanctioned plan was compared with certified copies obtained from GHMC, it is apparent to the naked eye that the 5th floor was added as if sanction was accorded to construct the 5th floor also. He submits that as per the available court documents, the 5th respondent not only leased out a major portion of the 5th floor to the petitioner but also entered into lease agreements concerning the 5th floor with others and the petitioner has approached the authority to take action against the said unauthorised construction. It is submitted that as a direct and proximate result of the inaction of Respondents 2 to 4, the petitioner's fundamental rights have been infringed.

It is submitted that the Hon'ble Apex Court as early as in 1955 had held that the building rules are enacted for the benefit of public and public interest has to be

understood and interpreted in the light of the entire scheme, purpose and object of the enactment. The hazard to the health and environment of not only the persons residing in the illegal colonization area but of the entire town as well as the provision and Scheme of the Act has to be taken into consideration and the Courts were found to have a duty to protect the public interest.

Learned counsel submits that a counter affidavit has been filed on behalf of the 5th respondent stating that the 5th respondent has made construction under deemed permission. He submits that there is no question of deemed permission when the permission is either rejected or quashed and by interpreting legal fiction in the statute, another fiction cannot be created by the Court. It is submitted that the 5th respondent has committed fraud by suppression of material facts and the application for construction was never accompanied by fees and the alleged deemed plan was invalid and no permissions could have been granted contrary to the master plan or the zonal development area. He submits that as the said constructions are without any permission, the same has to be demolished.

3. A counter-affidavit has been filed on behalf of the 5th respondent. Learned counsel Sri Meherchand Noori submits that the petitioner has come up before this Court only to harass the 5th respondent and it is a frivolous and vexatious litigation. He submits that the petitioner has entered into lease agreement with the 5th respondent. He submits that the 5th respondent is the absolute owner and landlord of the premises 'Diamond Tower' and the present lis is concerned with the 5th floor of the said building. The lease commenced on 15.12.2014 on a monthly rent of Rs.55,000/-. As per Clause (8) of the lease deed dated 28.11.2014, if the lessee fails to pay rents for three consecutive months, the owner is at liberty to terminate the lease agreement by giving ten days notice in writing to the lessee to pay the rent. It is submitted that the petitioner has committed default of rents from 15.12.2014 to 15.12.2015 for a period of 12 months which amounts to Rs.6,50,000/-. Though several requests have been made, the petitioner failed to pay the said amount. Then a legal notice was got issued on 31.08.2015 to the petitioner demanding him to pay the arrears of rent within 15 days from the date of receipt of the notice. Notice was received 'unclaimed' as the petitioner managed to return the same. Learned counsel submits that the petitioner is enjoying the premises without paying any rent from the date of inception of tenancy, as such, the 5th respondent filed O.S.No. 1035 of 2015. He submits that the petitioner proposed a project of franchise of M/s Eten Coaching and the petitioner induced the 5th respondent by false assurance of getting huge returns and profits over the same. Believing the same, the 5th respondent paid Rs.31,25,800/- to the petitioner and the petitioner has already got franchise in his name. All that money which was paid by the 5th respondent was diverted to the said franchise offices at SR Nagar and RTC X Road. Learned counsel submits that the 5th respondent has filed complaint against the petitioner herein. He submits that the petitioner being a 3rd party to the premises, has no right to question the nature of construction or he cannot have a

grievance with regard to the sanctioned plan. Being a lessee / tenant, his concern is only with regard to the lease agreement entered into between the parties. The lease was terminated and he is squatting over the property illegally with the help of interim orders obtained from the Court by making false representations. He submits that as far as construction of 5th floor is concerned, the 5th respondent has made an Application on 10.10.2012 seeking permission for construction of 5th floor. Once such an Application is made under Section 428 of the Act, the Commissioner is bound to either convey his approval or disapproval within thirty days, but no such order was passed by the respondents. Under the deemed permission, the petitioner has constructed the 5th floor and completed the same. It is submitted that even if the same is constructed without obtaining plan, the case of the 5th respondent will fall within the four corners of Section 455-AA of the Act. He submits that the 5th respondent has made an Application seeking regularisation on 31.01.2016 duly paying an amount of Rs.10,000/- by way of banker's cheque dated 22.12.2016. He submits that in the light of the orders passed in public interest litigation, the said G.O. was suspended and the petitioner is waiting for finalisation of the said proceedings. It is submitted that in *Sanjeev Bhatnagar v. Union of India* AIR 2005 SC 2841, the Hon'ble Supreme Court imposed a monetary penalty against an advocate for filing a frivolous and vexatious petition and the same was dismissed labelling it as publicity interest litigation and costs of Rs.10,000/- were imposed. Learned counsel also relied on the judgments in *Charan Lal Sahu v. Giani Zail Singh* AIR 1984 SC 309, *Guruvayur Devaswom Managing Committee v. C.K. Rajan* (2003) 7 SCC 546 and submitted that the petitioner could not make out any case and the Writ Petition is liable to be dismissed.

4. No interim orders are passed in this Writ Petition W.P.No. 31472 of 2021

This Writ Petition is filed by the very same petitioner in Writ Petition No. 25508 of 2018 seeking the following relief:

" to issue writ or order or direction more particularly one in the nature of writ of mandamus to declare the inaction of Respondent Nos. 2 to 7 as arbitrary, illegal against the law, unconstitutional and contrary to the provisions of Greater Hyderabad Municipal Corporation Act, 1955 inter alia and consequently direct the respondent authorities to demolish the unauthorised and illegal construction made by Respondent No.8 and to pass such other or further orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

5. Smt. Sravya Katta, learned counsel for the petitioner while reiterating the very same averments and submissions as made in the earlier Writ Petition, submits that when the 8th respondent has constructed illegal and unauthorised multi-storied construction in the property, without following the necessary Zonal regulations, maintaining set backs, maintenance of requisite guidelines pertaining to footpath and common area, encroached upon common public lanes thereby making it difficult for the residents and inhabitants to stay safely in the area, fire safety hazards. In support of these violations made by the unofficial

respondent, the official respondents are not taking any steps to remove the demolished illegal construction. The petitioner is made to run from pillar to post, still no action has been initiated. He submits that the said action on the part of the official respondents in taking action on the unauthorised construction is highly arbitrary. It is submitted that they gave a representation to the GHMC as well as South Central Railway stating that the construction is made by violating the norms of not maintaining a minimum legal distance of 100 feet from the railway track in Khairathabad. In spite of that, no action has been taken by the Railways also.

6. A counter-affidavit has been filed on behalf of the respondent municipal corporation wherein they have stated that after receiving complaint from the petitioner, the 4th respondent inspected the premises and found no fresh construction activity in the 5th floor. On verifying the records, it is found that BRS Application was filed seeking regularisation of the 5th floor construction before the official respondents and the same is pending due to pendency of public interest litigation. It is submitted that permission is for ground+ three upper floors and partly the 4th floor vide permit dated 30.08.2012. It is submitted that the petitioner is not having any locus standi to file the present petition against the 2nd respondent by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. When they inspected the site, they found that there is no construction activity on the 5th floor. The Government issued G.O.Ms.Nos. 151 & 152 for regularisation of unauthorised construction on the said scheme and on verifying the records of the office, it is found that there is BRS Application dated 31.01.2016 and in view of the interim orders passed by the Division Bench, the said Applications are pending. The petitioner and the unofficial respondent may be having some internal disputes as far as the municipality is concerned and they will take action against the unauthorised and illegal construction as per the orders of this Court.

7. Learned Standing Counsel for Railways Ms. Anjali Agarwal submits that the petitioner has not taken no objection from the Railways. It is submitted that Railways is having right to demolish the building. It is submitted that if the building is constructed without maintaining a distance of 100 feet from the track, they will take appropriate steps.

8. These two Writ Petitions are filed by the tenant stating that the premises which is leased out to him is an unauthorised construction and the same shall be removed by the respondent Corporation. Before filing a complaint before the respondent municipal corporation, both the petitioner as well as the unofficial respondent have filed civil suits and criminal cases and both of them are fighting tooth and nail. In this backdrop, the petitioner has approached the respondent corporation stating that the unofficial respondent has made construction without obtaining permission and it has also been stated that the unofficial respondent has manipulated or made corrections in the plan. Several other grounds are raised and several allegations are made against the unofficial respondent. In

turn, the unofficial respondent also made several allegations against the petitioner. From the pleadings and from the case of both the parties, on the face of it, it appears that the petitioner with an intention to settle the disputes between the parties, have approached this Court by filing these two writ petitions. As the petitioner is not successful in the writ petition of 2018, he has come up with the second writ petition.

9. A counter-affidavit has been filed stating that the 5th respondent has paid necessary fees and also made representation seeking regularisation of the said structure and in view of the interim orders passed in PIL, the official respondents are not in a position to regularise the same. When the 5th respondent's application is pending for regularisation, at this stage, there cannot be any direction to the respondents to demolish the structures or to take any action against the said structures. The 5th respondent has to necessarily wait till suitable orders are passed in the PIL.

10. Then coming to the contention of the learned Standing Counsel for the Railways, according to them, there shall not be any high-rise building adjacent to railway station as per G.O.Ms.No. 168, dated 07.04.2012. Even under the BRS Scheme also, the official respondents cannot regularise the construction contrary to the Zonal regulations or guidelines issued by the Central Government. If the construction is made within 100 feet from the railway track, it would be dangerous.

11. Hence, these Writ petitions are disposed of by directing the respondent Corporation to consider whether the deviations that are made by the unofficial respondents are permissible deviations under the Building Regularisation Scheme, and if so, they shall wait for the orders to be passed by the Division Bench in this regard and they shall not interfere with the same. If the deviations are not permissible, the GHMC shall take appropriate action, in accordance with law. The Railways shall also look into the representations of the petitioner and if the construction is within 100 feet from the railway track or contrary to the guidelines issued by the Central Government in this regard, they are at liberty to take appropriate action in accordance with law. No order as to costs.

12. The Miscellaneous Applications, if any shall stand automatically closed.