
(2022) 03 TEL CK 0042
In the Telangana High Court
Case No : Writ Petition No. 17661 Of 2021

Bathini Chetan

APPELLANT

Vs

State Of Telangana And 5 Others

RESPONDENT

Date of Decision : 15-03-2022

Acts Referred:

Citation : (2022) 03 TEL CK 0042

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : D Narendar Naik

Final Decision : Dismissed

Judgement

1. This Writ Petition has been filed seeking a Writ of Certiorarified Mandamus calling for the record of respondents 2 and 3 in respect of the impugned order dt.07.10.2020 and declare the same as illegal and null and void and violative of Proceedings No.KUDAL000066/2015-2017 dt.04.10.2018 issued by the 4th respondent.

2. Brief facts of the case are that the petitioner claims to be the owner of a plot admeasuring 448 square yards situated in Survey No.4/B of Lashkar Singaram Village, KUC Junction, Hanamkonda, Warangal District, having purchased the same from one Koneru Dhanalaxmi vide registered sale deed bearing Document No.2580 of 2008 dt.18.04.2008. The petitioner had filed a suit against Dodla Polaiah and 9 others in O.S.No.350 of 2017 on the file of the I Additional Senior Civil Judge, Warangal for declaration of title and also I.A.No.551 of 2017 for injunction and ad-interim injunction was granted restraining the respondents therein from alienating the suit-schedule B property to third parties vide orders dt.05.07.2017. Meanwhile, Dodla Polaiah had made an application before respondent No.4 for regularisation of approved layout in Survey No.4/B for a total extent of 2916 square yards. The same was rejected vide proceedings dt.04.10.2018 observing that the application of the applicant has been examined

with reference to the T.S. Regulation of Unapproved and Illegal Layout Rules, 2015 and hence the said plot is not regularised under the said Rules due to the reason that the site is under legal litigations/disputes. A copy was also marked to the Commissioner, Greater Warangal Municipal Corporation, Warangal along with plan for information and necessary action. Thereafter, the said Dodla Polaiah has alienated the property in favour of respondents 5 and 6. The respondents 5 and 6 have made an application for regularisation of the site and also for building permission before respondent No.3 and vide proceedings dt.07.10.2022, permission was granted for construction of ground floor after collecting the fee for penal charges for regularisation of the plot. The petitioner is now challenging this building permission granted to respondents 5 and 6 on the ground that once the application of the predecessors-in-interest of respondents 5 and 6 has been rejected by respondent No.4, the same ought not to have been entertained by respondent No.3 and considered and permitted by respondents 2 and 3 and it is in violation of the earlier directions of 4th respondent dt.04.10.2018.

3. When the matter came up for hearing for admission on 4.08.2021, there was an order of interim suspension of the impugned order dt.07.10.2020.

4. The unofficial respondents have filed stay vacate petition and the official respondents have also filed their counter affidavit.

5. Learned counsel for the petitioner, Sri D. Narendar Naik, reiterated the above submissions and has also drawn the attention of this Court to the provisions of the Telangana Municipalities Act in G.O.Ms.No.168 dt.07.04.2012 to demonstrate that sanctioning authority means the Vice Chairman of the respective Urban Development Authority or the Commissioner of respective Urban Local Body and that the building permit is to be granted by the sanctioning authority. According to the learned counsel for the petitioner, since there was an Urban Development Authority in the District of Warangal, it is only respondent No.4 who has the power to grant the permission and not respondent No.3 who has granted permission to respondents 5 and 6.

6. Learned Standing Counsel for the 2nd respondent has filed counter affidavit and Ms. Pingali Lakshmi, learned Standing Counsel for respondent No.2 submits that though initially respondent No.4 has rejected the regularisation application of the applicant on the ground that it was in an unapproved layout but subsequently the Government vide Memo dt.28.04.2017 has relaxed the same and has directed all the Municipalities in the State of Telangana to consider the building permission applications by collecting basic penalisation charges as per LRS-2015 and 33% compounding fee on the same plus open space contribution charges at 14% on the present market value of the site/plot applied for building permission. Therefore, according to her, the Corporation has considered the application of the applicant in accordance with the Memo dt.28.04.2017 and has accordingly granted permission to the unofficial respondents. Therefore, according to her, there is no illegality in the order passed by the official respondents.

7. The unofficial respondents 5 and 6 have filed counter affidavit and stay vacate petition stating that they have obtained the building permission in accordance with law and have commenced the construction work and because of the interim order of this Court, the work has been stayed and that they are incurring huge loss by the said stay order. They further submit that it is the municipal authorities who are authorised to grant building permission in the locality and respondents 5 and 6 have accordingly made application which has been considered and allowed in accordance with law.

8. Having regard to the rival contentions and the material on record, it is seen that initially the reason for KUDA rejecting the regularisation application was on the ground that the site is under legal litigations/disputes and also that the said land was in the unapproved layout. Subsequently, by virtue of the Memo No.2252/M1/2017 issued by the Government on 28.04.2017, the Government extended the benefit of Government Letter No.2252/M1/2017 dt.06.04.2017 pertaining to GHMC areas to the entire State, i.e., all the Municipal Corporations, Municipalities/Nagar Panchayats and Urban Development Authority areas. The respondents 2 and 4 are the authorities to consider and grant building permissions. Respondents 5 and 6 have been granted permission to make construction of only ground floor and therefore the municipal authority alone has the jurisdiction to grant the permission. The litigation between the petitioner and the predecessors-in-interest of respondents 5 and 6 cannot stall the proceedings before the official respondents unless and until there is an order of the Court restraining the authorities from doing so. The authorities are required to verify and be satisfied about the prima facie title of the applicant before granting permission to the applicant.

9. In view of the same, the Writ Petition filed by the petitioner is not maintainable and is accordingly dismissed. No order as to costs.

10. Pending miscellaneous petitions, if any, in this Writ Petition shall also stand dismissed.