

(2006) 08 AP CK 0090

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4889 of 2006

C. Venkat Rami Reddy and Others

APPELLANT

Vs

Vice-Chairman, Hyderabad Urban Development Authority and
Others

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 9 Rule 13
Constitution of India, 1950 — Article 226

Citation : (2006) 6 ALD 411 : (2006) 6 ALT 699

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Malla Reddy, for the Appellant; T. Niranjan Reddy, for Respondent
No. 1, Polisetti Radhakrishna and K. Raghuveer Reddy, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri Malla Reddy, the learned Senior Counsel representing the petitioners, Sri T. Niranjan Reddy, Sri Polisetti Radhakrishna and Sri K. Raghuveer Reddy, the learned Counsel representing the respondents.

2. Sri Malla Reddy, the learned Senior Counsel representing the petitioners had taken this Court through the contents of the affidavit filed in support of the writ petition and the respective stands taken in the counter-affidavit filed by the respondents 1, 2, 3 to 5 and would contend that in the facts and circumstances of the case without putting the writ petitioners on notice and without giving any opportunity and without following the procedure granting permission to respondents 3 to 5 for construction of building in the subject-matter of the writ petition being contrary to the provisions of A.P. Municipalities Act 1965 and also in violation of principles of natural justice, the same cannot be sustained.

3. Per contra Sri T. Niranjan Reddy, the learned Counsel representing the 1st respondent had explained the facts and circumstances and would maintain that the 1st respondent is not aware of the pendency of O.S. No. 453/2002 on the file of I Additional Senior Civil Judge, Ranga Reddy and the said authority is not a

party in the said civil suit and the pendency of the said proceedings was not brought to the notice of the authority and the authority was not aware of the dispute pending adjudication before the competent Civil Court. The learned Counsel also would further explain that the 1st respondent would be bound by the orders which may be made by this Court in the writ petition.

4. Sri Polisetti Radha Krishna, Standing Counsel representing the Municipalities (Telangana Area), the Counsel for the 2nd respondent, would maintain that the 2nd respondent is not aware of the pendency of the suits. The learned Counsel would maintain that the petitioner made a complaint dated 20-10-2005 which is after granting permission to respondents 3 and 4 i.e., after 14-10-1995. The learned Counsel also would maintain that the 2nd respondent is not aware of the above earlier rejection of the permission by the 1st respondent and since the petitioners were not in possession of the suit site at any juncture, the respondent had not issued any prior notice to the petitioners and this respondent granted permission basing on the technical sanction given by the 1st respondent and attested registered document No. 4361/2000 dated 29-5-2000 submitted by respondents 3 to 5 and hence the same cannot be said to be unfair or contrary to the provisions of A.P. Municipalities Act or the same is not in violation of principles of natural justice.

5. Sri Raghuveer Reddy, the learned Counsel representing the respondents 3 to 5 had taken this Court through the details of the counter-affidavit filed and would contend that in the facts and circumstances of the case, this question may be agitated before the competent Civil Court in the pending civil suit and at this stage the permission already granted need not be disturbed.

6. Heard the Counsel and perused the respective pleadings of the parties and the material available on record.

7. The writ petition is filed for a writ of mandamus to call for records and declare the proceedings bearing Permit No. D/BA/ 235/2005 dated 14-10-2005 issued by the 2nd respondent granting permission to the respondents 3 to 5 without adopting due process of law for construction of building in the petitioner's plot bearing Plot No. 51 in Sy.No. 42, situate at Ramanthapur Village, Uppal Mandal, Ranga Reddy District as illegal, arbitrary, without any sanction of law and contrary to the provisions of A.P. Municipalities Act, 1965 and violative of principles of natural justice. It is stated that petitioners 2 and 3 are the sons of the 1st petitioner and they are the owners and possessors of the property bearing Plot No. 51 in Sy.No. 42 at Ramanthapur Village, Uppal Mandal, Ranga Reddy District having inherited from their mother late Mrs. C. Venkatamma. Late Mrs. C. Venkatamma during her life time had purchased the said plot from its lawful owner and possessor Sri G. Mallesham for a valid sale consideration under Agreement of sale dated 22-8-1985 and since the said owner i.e., G. Mallesham did not come forward to execute a registered sale deed in favour of late Mrs. C. Venkatamma even after discharging the lawful obligation on her part under the said agreement, she was constrained to file O.S. No. 179/1994 on the file of

Principal Junior Civil Judge, East and North, Ranga Reddy District at Hyderabad seeking specific performance of contract. The said suit was decreed in her favour by the Court below by the judgment and decree dated 2-5-2000. Subsequently as the owner failed to execute the registered sale deed despite the decree being passed by the Court, she filed E.P. No. 226/2000 for execution of decree pursuant to which the Principal Junior Civil Judge, East and North, Ranga Reddy District was pleased to execute a registered sale deed on behalf of the owner in the name of late Mrs. C. Venkatamma by registered document No. 8716/2001 dated 24-7-2001. It is also stated that meanwhile during the pendency of the E.P. on coming to know about the design to usurp the subject property along with other plots bearing Nos. 49, 50 and 52 in Sy.No. 42 by the 3rd and 4th respondents and about their attempts to make application to the 1st respondent through the 2nd respondent-Municipality for obtaining permission to construct a residential building, immediately a legal notice dated 20-9-2000 was got issued thereafter by late Mrs. C. Venkatamma to the 1st and the 2nd respondents bringing to their notice about the fact of the ownership and also requesting them to give an opportunity to file objections in case the 3rd and the 4th respondents approach them seeking permission. On receiving the said notice, the 1st respondent had rejected the permission application made by the 3rd and the 4th respondents on the ground that the land is under dispute and also not forming part of any lay out and directed to approach the Court of law for land dispute by proceedings No. 7877/P4/HUDA/2000 dated 4-11-2000. Meanwhile the 4th respondent had filed O.S. No. 455/2002 on the file of 1 Additional Senior Civil Judge, Ranga Reddy District seeking relief to declare him as owner of subject property and also for cancellation of decree made in O.S.No. 179/ 94 on the file of Principal Junior Civil Judge, East and North, Ranga Reddy District at L.B. Nagar and for perpetual injunction and now the said suit is pending trial on the file of V Senior Civil Judge (FTC), Ranga Reddy District. However the 3rd and the 4th respondents with the connivance of the 2nd respondent-Municipality despite pendency of civil litigation and without having no permission in their favour, with a view to occupy had constructed a compound wall around the plot. Immediately, the 1st petitioner herein-husband of late Mrs. C. Venkatamma, made a representation dated 24-12-2001 to the 2nd respondent to demolish the illegally constructed compound wall, but however the subordinates of the 2nd respondent who are hand in glove with the 3rd and the 4th respondents and also on account of fact that the 3rd and the 4th respondents are highly influential, did not heed to the request of the 1st petitioner.

It is also further stated that on knowing about the illegal attempts made by respondents 3 and 4 for obtaining permission to construct a complex in Sy.No. 42 which includes the plot of the petitioners also by creating false and fabricated documents, again the petitioners got issued a legal notice dated 20-10-2005 to respondents 1 and 2 to issue notice to the petitioners before taking any decision on permission. It is also stated that the petitioner also made a complaint dated 20-10-2005 to the Commissioner of Police, Hyderabad and Station House Officer,

Uppal for initiation of action against Sudhakar Reddy and respondents 3 and 4 for making attempts to grab the plot on false and fabricated documents and also for the reason of physical threat to the life of the 1st petitioner. Upon the said complaint a crime in FIR No. 617/2005 dated 21-10-2005 was registered against them. Further it was stated that on enquiry it came to be known that the 2nd respondent Municipality had granted permission to the respondents 3 and 4 in Permit No. D/BA/ 235/2005 dated 14-10-2005 granting permission to the respondents 3 to 5 for construction of building in the subject land which includes the petitioners' plot No. 51. Further the 2nd respondent-Municipality despite having the knowledge that the plot No. 51 belongs to the petitioners which was brought to its notice by the earlier legal notice dated 20-9-2000 got issued by late C. Venkatamma and also about the knowledge of earlier rejection of permission by the 1st respondent, granted the permission impugned under the writ petition. Further, the 2nd respondent had not issued any prior notice as requested before granting permission to the respondents 3 to 5. It was further stated that a representation dated 16-2-2006 was made to the 1st respondent to issue a copy of the proceedings in Permit No. D/BA/2005 dated 14-10-2005, but however the petitioners were instructed to approach the concerned Municipality for release and sanction of the same. Pursuant to the same, an application dated 16-2-2006 was made to the 2nd respondent to issue proceedings of building permission, but the same was rejected stating it cannot be issued and the civil disputes may be settled between the parties. As such the action of the 2nd respondent in granting permission to the respondents in respect of the petitioners property is totally illegal, arbitrary, unfair and contrary to the provisions of the Municipalities Act, besides being violative of principles of natural justice. It is the obligation of the 2nd respondent under law to issue notice to the affected party before granting permission in respect of any property when there is a dispute between the parties and more particularly when objection is pending.

8. Thus, specific stand is taken by the writ petitioners that the respondents are expected to be fair, unbiased and act in consonance with the principles of natural justice and the respondents 1 and 2 are obligated under law to follow the procedure prescribed under the provisions of A.P. Municipalities Act 1965 and the action of the 2nd respondent in granting permission to the respondents 3 to 5 without issuing any prior notice to the petitioners is without jurisdiction and contrary to the provisions of the Act aforesaid and hence the said unauthorised act is liable to be declared as illegal and arbitrary. It is also stated that the 2nd respondent had issued impugned proceedings without application of mind and without verifying the records.

9. The 1st respondent filed a counter-affidavit taking a stand that the 4th respondent submitted application for building permission and after receiving the application certain objections were raised by the petitioners and consequently the 1st respondent addressed a letter to the 4th respondent on 4-11-2000 informing that approval for compound wall and room permission in the site had been rejected. It is also stated that the 1st respondent is not aware of the

pendency of O.S. No. 455/ 2002 on the file of I Additional Senior Civil Judge, Ranga Reddy District. It is further stated that the 1st respondent is not made a party to O.S.No. 455/2002 and as such the pendency of the proceedings is not within the knowledge of the 1st respondent. In view of the fact that the pendency of the proceedings were not brought to the notice of the 1st respondent the 1st respondent was not aware of the dispute pending adjudication before the competent Civil Court. It is further stated that basing upon the material placed before the 1st respondent a recommendation was made for grant of building permission in Plot Nos. 50 to 59 in Sy.No. 42 of Ramanthapura Village. The 1st respondent granted technical approval for building permission and forwarded the file to the 2nd respondent for release of the building permission. It is also stated that as the pendency of the suit was not brought to the notice of the 1st respondent and as the 1st respondent is not made a party to the suit, the application was processed basing on the material available on record. It is further stated that in the event the material is produced by the aggrieved party before the 1st respondent necessary steps would be taken. The matter is sub judice before the competent Civil Court and it is open to the parties to take appropriate steps seeking necessary reliefs. Further, the 1st respondent would be bound by the orders which may be made by this Court in the writ petition.

10. In the counter-affidavit filed by the 2nd respondent while denying various allegations it was stated that respondents 3, 4 and 5 had applied for technical approval of the building plan in Plot Nos. 49 to 54 of Sy.No. 42(P), Ramanthapur Village on 7-7-2004 from the 1st respondent. The 1st respondent by Lr.No. 7037/P4/Plg/ HUDA/2005, dated 3-10-2005 accorded technical sanction and forwarded the same to the 2nd respondent for necessary sanction and release. Accordingly the 2nd respondent verified the plans and attested copies of title deeds and after collecting the necessary charges granted permission to the respondents 3 to 5 in proceedings No. D/ BA/235/2005 dated 14-10-2005 and since the respondent is not aware about the earlier rejection of the permission by the 1st respondent and the petitioners also being not in possession of the suit site at any juncture the 2nd respondent had not issued any prior notice to the petitioners and the permission was granted basing on the technical sanction given by the 1st respondent and attested registered document No. 4361/ 2000 dated 29-5-2000 submitted by respondents 3 to 5 and the same is not unfair or contrary to the provisions of A.P. Municipalities Act and the same is not violative of principles of natural justice. It is also stated that the respondent had violated the procedure prescribed under the provisions of A.P. Municipalities Act, 1965 and certain other factual details also had been narrated.

11. In the counter-affidavit filed by respondents 3 to 5 it was averred in Para-3 that the 4th respondent and respondents 3 and 5 had purchased plots bearing Nos. 49 to 54 in Sy.No. 42 of Lakshminagar, Ramanthapur in Uppal Municipality. The 4th respondent had purchased plot Nos. 51 and 52 totally admeasuring 618 Sq. yards from G. Saibaba s/o. late Chittaraiah through registered sale deed

dated 29-5-2000 vide Doc.No. 4361 of 2000. The 3rd respondent had purchased Plot Nos. 49 and 50 from another son of Chittaraiah by name Balakrishna through registered sale deed dated 18-5-1984. The 5th respondent had purchased plot bearing Nos. 53 and 54 under registered sale deed dated 31-1-1995 from late G. Malleshatn who was the owner of the above property. After the purchase respondents 3 to 5 made application for permission to make constructions and the same was returned in the year 2000 on some technical objections. Thereafter by enclosing all the necessary sale deeds and complying with other requirements the respondents 3 to 5 again applied for construction of a residential complex in October 2004 for construction of ground + five upper floors in a total area of 1855 Sq. yards. The permission was granted by Uppal Municipality after the H.U.D.A had cleared technical sanction on 14-10-2005. Thereafter the respondents 3 to 5 had commenced the construction work and slab work is completed in respect of ground + four upper floors and in respect of the 5th floor half of the slab work is completed. The 4th respondent filed suit O.S.No. 455/ 2002. It came to light that the wife of the 1st petitioner and mother of petitioners 2 to 4 also were making claim for the said property. As such the suit was filed for declaration and injunction in respect of Plot No. 51, admeasuring 309 Sq. yards. On verification, it came to be known that the wife of the 1st petitioner and the mother of petitioners 2 to 5 had filed a suit in O.S.No. 179/94 against G. Mallesham for specific performance of agreement of sale dated 22-8-1985. The said Mallesham seems to have filed a written statement denying the execution of authorities and thereafter he died. As such an ex parte decree came to be passed and ultimately the legal heirs of Mallesham had filed interlocutory applications seeking to set aside the ex parte decree by condoning the delay. The Court below had considered the delay application and thereafter the application filed under Order 9 Rule 13 of the CPC to set aside the ex parte decree was allowed on 22-3-2005 and the suit was restored by which the title or claim of the wife of the 1st petitioner and the mother of petitioners 2 to 4 is pending adjudication. It is further stated that so far no rights had been adjudicated and against the order condoning the delay and also ordering the application for setting aside the ex parte order, two revisions had been filed by the petitioners before the Hon"ble Court and this Court was of the opinion that the applications were allowed ex parte and the petitioners could also file a petition to reconsider the said applications on merits, as if it was in the form of a default order. Thereafter the matter is pending before the trial Court. It is further stated that the rights of the petitioners over the land are not yet adjudicated and they are relying on an agreement of sale of 1985 and the suit had been filed after nearly nine years. The rights of the petitioners will have to be adjudicated first so that they can make any claim in respect of the above property. It is also stated in Para-4 of the counter-affidavit that respondents 1 and 2 had considered the matter in detail and after considering all the documents they were prima facie satisfied that these respondents are entitled for grant of permission and accordingly permission had been granted. It is further stated that the respondents 1 and 2 while considering the application for grant of permission

under the provisions of Municipalities Act and also building bye-laws have to see the prima facie case and thereafter permission has to be granted if the requirements under the provisions of Municipalities Act and the building bye-laws are complied with. There is absolutely no illegality or irregularity in the proceedings issued by the 1st respondent and the 2nd respondent granting permission in favour of these respondents. The registered sale deed which was executed by the Court of Principal Junior Civil Judge (East and North), Ranga Reddy District in O.S. No. 179/94 basing on the ex parte decree had already been set aside and now the suit is pending adjudication. As such the petitioners cannot claim any title to the property now and at best they are only the alleged agreement holders. The notice referred in Para-5 is dated 20-10-2005 and respondents 3 to 5 are not aware of the same and by that time the permission was already granted. The suit filed by the petitioners against these respondents is pending adjudication and when the matter is pending in civil Court it is not open to the petitioners to invoke the parallel jurisdiction of this Hon"ble Court. At best the petitioners may approach the said civil Court for any relief. The petitioners cannot seek suspension of the proceedings granted in favour of respondents 3 to 5. Further this Hon"ble Court had already observed that any constructions made will be subject to the result of the writ petition. The petitioners are now seeking further relief not to alienate the property pending further orders which is in the nature of injunction to be sought for under Order 39 Rules 1 and 2 of the Code of Civil Procedure. The remedy for obtaining the said injunction is only in civil Court and not before this Hon"ble Court. It is also further stated that the constructions are in the final stages and these respondents are in possession of the property by means of their purchase through registered sale deeds and are entitled for grant of permission for construction which had been already granted. If the petitioners are aggrieved by the grant of permission in favour of these respondents, they have to invoke the jurisdiction of the civil Court and not the jurisdiction of this Hon"ble Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. There are absolutely no merits in the above writ petition and the same is fit to be dismissed in limini.

12. In substance these are the respective pleadings of the parties. Reliance was placed on T. Rameshwar Vs. Commissioner, Municipal Corporation of Hyderabad and Others, .

13. On 4-11-2000, the Hyderabad Urban Development Authority made the following order:

With reference to your application cited, for approval of compound wall and room permission in the site under reference has been examined and rejected as the said land under reference is under dispute and not forming part of any approved layout. Hence, you are advised to approach Court of law for land dispute.

In view of the above, your application for approval of building permission in the site under reference is hereby rejected.

The respective stands taken by the parties relating to the pendency of the suit and the nature of suit and other aspects already had been referred to supra. The principal stand taken by the 1st respondent is that inasmuch as the 1st respondent is not aware of the pending civil proceeding, inasmuch as the 1st respondent is not a party to the said civil proceeding, on the material available on record appropriate order was made. In substance the 2nd respondent also had taken a similar stand. No doubt submissions at length were made in relation to the nature of the suit which is pending and whether these questions are to be agitated in the pending civil suit or respondents 1 and 2 are bound to consider the complaints or objections raised in relation to the building permission in question in the facts and circumstances of the case. In the light of the specific stand taken by both the respondents 1 and 2, this Court is of the opinion that it cannot be said that the impugned orders were made though these authorities in fact had knowledge of the pending civil litigation. What is the effect or what is the impact of the pending litigation and what is the scope and ambit of the suit and in the light of the relevant statutory provisions governing the field whether it is a case for granting permission or withholding the permission, or to make it specific, a conditional permission alone be granted which may be subject to further orders which may be passed in the civil Court, these are all aspects which may have to be considered by both the respondents 1 and 2 after putting the petitioners and also respondents 3, 4 and 5 on notice and taking into consideration all the facts and circumstances. In the light of the same, inasmuch as taking the respective stands taken by both the respondents 1 and 2 into consideration that they had no knowledge about the proceedings referred to in the affidavit filed in support of the writ petition, the respondents 1 and 2 are hereby directed to reconsider the issue after putting both the petitioners and respondents 3 to 5 on notice and pass appropriate orders in relation thereto within a period of three months from the date of receipt of this order.

14. With the above direction, the writ petition is disposed of. No order as to costs.