
(2022) 03 TEL CK 0058
In the Telangana High Court
Case No : Writ Appeal No. 175 Of 2022

Commissioner

APPELLANT

Vs

Ghousia Begum

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Greater Hyderabad Municipal Corporation Act, 1955 — Section 456, 456(1), 456(2), 459

Citation : (2022) 03 TEL CK 0058

Hon'ble Judges : Satish Chandra Sharma, CJ; Abhinand Kumar Shavili, J

Bench : Division Bench

Advocate : Pasham Krishna Reddy, Mirza Nisar Ahmed

Final Decision : Dismissed

Judgement

The present writ appeal has been filed by the appellants (Greater Hyderabad Municipal Corporation) (GHMC) being aggrieved by the order dated 28.10.2021 passed in W.P.No.12898 of 2021.

The facts of the case reveal that the respondent No.1/writ petitioner, Smt. Ghousiya Begum, came up before the learned Single Judge being aggrieved by the notice dated 01.06.2021 issued under Section 456 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, "the GHMC Act"), and challenging the same as illegal, arbitrary, unconstitutional and contrary to the GHMC Act as well as the Municipal Corporation Building Bylaws, 1981. The facts, as reflected from the writ petition, reveal that Smt. Fatima Bee, mother of the respondent No.1/writ petitioner was the absolute owner and possessor of the property bearing open plot No.422, admeasuring 133 square yards situated at Lakshmi Narasimha Nagar, Yellareddyguda, Hyderabad. She has acquired the said property by virtue of a patta certificate dated 12.06.1981 issued by the then Government of Andhra Pradesh. During her lifetime, she has executed a gift settlement deed dated 19.07.1996 in favour of her daughter i.e., the respondent No.1/writ petitioner. By virtue of the aforesaid gift settlement deed, the respondent No.1/writ petitioner

became the titleholder of the property. She has constructed a residential house and got it assessed in her name. A municipal number was also assigned i.e., 4-3-237/422 and the respondent No.1/writ petitioner has been in possession of the subject property since 12.06.1981. There was a rival claim in respect of the same property and in those circumstances, as the respondent No.4 in the writ petition, Smt. Bodi Saritha, started interfering with the peaceful possession of the respondent No.1/writ petitioner, the respondent No.1/writ petitioner filed a civil suit i.e., O.S.No.482 of 2017 before the learned V Junior Civil Judge, City Civil Court, Hyderabad, and the same is pending. There is an order of status quo granted by the trial Court, which is still pending. It is pertinent to note that Smt. Bodi Saritha also preferred a civil suit i.e., O.S.No.98 of 2018 for eviction and recovery of rents and damages. Both the suits are pending before the trial Court. In O.S.No.98 of 2018, one interlocutory application i.e., I.A.No.12 of 2018 was filed by Smt. Bodi Saritha seeking deposit of arrears of rent and the same was dismissed by the trial Court on the ground that prima facie there was no evidence to show that the respondent No.1/writ petitioner was a tenant of Smt. Bodi Saritha. The facts further reveal that Smt. Bodi Saritha approached the GHMC and some report was obtained in the matter and based upon the report, the GHMC issued directions for demolition of the house. In those circumstances, the writ petition was preferred before this Court.

The relevant portion of the order passed by the learned Single Judge is reproduced as under:- (paragraphs 8 and 9):-

"8. ANALYSIS AND FINDING OF THE COURT:

i) The rival submissions and the material available on record would reveal that the petitioner herein is claiming right over the subject plot under a gift settlement deed dated 19.07.1996 executed by her mother in her favour. According to her, the subject plot bearing No.422, admeasuring 133 square yards situated at Lakshmi Narasimha Nagar, Yellareddyguda, Hyderabad, was acquired by her mother, Smt. Fatima Bee, by virtue of a Patta Certificate, dated 12.06.1981 issued by the then Government of Andhra Pradesh. Thereafter, the petitioner herein had constructed a residential house and got the same assessed. She has been paying property tax. Thus, according to the petitioner, she and her mother have been in possession and enjoyment of the subject plot since last 42 years. Whereas, according to respondent No.4, she is claiming right over the subject plot under a registered sale deed bearing document No.2748 of 2017, dated 09.05.2016 having purchased from Smt. M. Pushpalatha, and that her vendor Smt. M. Pushpalatha had purchased the subject property from the mother of petitioner under a AGPA bearing document No.1563 of 2007, dated 27.04.2007, whereas according to the petitioner, her mother died on 03.05.2014 and, therefore, respondent No.4 claims right over the subject plot on the strength of forged document.

PROCEEDINGS PENDING BETWEEN THE PARTIES:

S.No.

Case/Crime No.

Relief Sought

Remarks

1.

O.S. No.482/17 (V JCJ, CCC, Hyd.)

Perpetual injunction

Pending

2.

O.S. No.98/18 (V JCJ,

CCC, Hyd.)

Eviction, arrears of rental and damages

Pending

3.

W.P. No.11857/18

For removal of illegal and unauthorized construction over the subject plot

Pending

4.

W.P. No.9024/18

To declare the action of respondents in not removing the illegal and unauthorized construction over the subject plot as bad

Pending

5.

W.P. No.10395/19

To declare the action of respondent Nos.3, 4,

6 and 7 in disconnecting electricity supply and water supply connection without prior

notice and its restoration.

Pending

6.

C.C. 982/18(III ACMM, Hyd.)

Filed by Tahsildar, Khairatabad Mandal

Pending

7.

FIR No.250/18 of Police

Station Banjara Hills, Hyd

Pending

8.

FIR 717/20 of Neredmet P.S.

Pending

9.

FIR No.471/17 of P.S.

Banjara Hills

Pending

10.

FIR No.473/17 of P.S.

Banjara Hills, Hyd.

Pending

11.

FIR No.650/2019 of P.S.

Banjara Hills, Hyd.

Pending

ii) Thus, there are serious disputes between the parties in respect of the subject plot. All the above said proceedings are pending. Even in the order dated 03.05.2018 passed in I.A. No.12 of 2018 in O.S.No.98 of 2018 by the learned XXI Junior Civil Judge, City Civil Court, Hyderabad filed by respondent No.4, there is a finding that there is a serious dispute with regard to the ownership of the subject plot. Respondent No.4 has not established any prima facie evidence to show that the petitioner herein is a tenant of respondent No.4 and that she has agreed to pay the rent. It is also relevant to note that vide order dated 04.10.2017 passed by the learned V Junior Civil Judge, City Civil Court, Hyderabad in I.A. No.72 of 2017 in O.S. No.482 of 2017 filed by the petitioner herein, the trial Court had directed both the parties to maintain status quo till the

disposal of the suit. According to the learned counsel for the petitioner and respondent No.4, the said orders are subsisting and the said suits are pending.

iii) It appears from the record that during subsistence of the said order dated 04.10.2017, respondent No.4 approached respondent No.3 complaining that the subject plot is in dilapidated condition and to take action in accordance with law for demolition. On receipt of the said complaint / representation, respondent No.3 had forwarded the same to the Executive Engineer for his opinion with regard to the structural stability / condition of the subject property and for taking action. The Executive Engineer had obtained report from JNTU. On the strength of the said report, respondent No.3 had issued the impugned notice dated 01.06.2021 under Section - 456 of the GHMC Act, 1955 instructing the petitioner to vacate the subject plot immediately for demolition.

iv) In the impugned order, it is mentioned that JNTU has inspected the house with their technical staff and gave a report. It is the specific contention of the petitioner that neither JNTU, nor the GHMC have served any notice while conducting the alleged inspection. Therefore, the said alleged report of JNTU dated 26.04.2021 was obtained behind her back. Moreover, in the impugned notice, dated 01.06.2021, it is mentioned that the building consists of a shed covered with Asbestos Cement (AC) Sheets supported on brick walls, and that as the walls in the portion of the building are not covered with roof, there is a possibility of the walls getting collapsed during heavy rains and, therefore, the building is in dilapidated condition.

v) In the impugned notice, there is also a mention about the notice dated 12.01.2021. According to the learned counsel for the petitioner, respondent No.3 had not served the said notice on the petitioner herein. It is also relevant to note that in the counter filed by respondent No.3, there is no mention about the service of the said notice on the petitioner. Respondent No.3 has filed copy of the said notice dated 12.01.2021 along with the counter which shows that respondent No.4 has received the copy of the said notice, whereas, the learned counsel for the petitioner disputes the service of notice on the petitioner. On comparison of the signature of the petitioner available on the Vakalat and the writ affidavit with the signature available on the notice dated 12.01.2021, the same do not tally. In the report dated 26.04.2021, the photograph of the subject plot is shown. But, there is no mention about the serving of notice or presence of the petitioner while JNTU and respondent No.3 conducted inspection of the subject plot. In the counter filed by respondent No.3, it failed to file any document and there is no recital to the effect that while conducting the inspection, any notice was served on the petitioner and that the petitioner was present. Thus, as rightly contended by the learned counsel for the petitioner, the said report of the JNTU, dated 26.04.2021 is behind the back of the petitioner.

vi) With regard to the contention of learned counsel for respondent No.4 that Patta Certificate issued in favour of the mother of the petitioner is fake and that the petitioner is claiming right over the subject plot illegally. Therefore, the

Tahsildar had lodged a complaint against the petitioner. It is relevant to note that according to respondent NO.4, Vendor i.e., Smt. M. Pushpalatha had purchased the subject property from the mother of the petitioner under a registered AGPA bearing document No.1563 of 2007, dated 27.04.2007. She had purchased the said property from the said Smt. Pushpalatha under a registered sale deed bearing document No.2748 of 2017 dated 09.05.2016. Thus, respondent No.4 cannot contend that the patta certificate issued in favour of respondent No.4 is fake.

vii) All the above said facts including the pendency of suits, crimes, writ petitions would reveal that there is a serious dispute with regard to the title over the subject plot between the petitioner and respondent No.4. The said dispute will be decided by a competent Civil Court. Admittedly, both the petitioner and respondent No.4 were directed to maintain status quo during pendency of the suit in O.S. No.482 of 2017. The suit in O.S. No.98 of 2018 filed by respondent No.4 seeking eviction of the petitioner from the subject plot is pending. Thus, respondent No.4 has admitted that the petitioner herein is in physical possession of the subject plot and, therefore, respondent No.3 had directed the petitioner to vacate the subject plot to demolish the structure immediately. This Court is of the considered view that respondent No.4 suppressed the fact of passing status quo order by the trial Court in O.S. No.482 of 2017 and also pendency of the above said two suits. During subsistence of the said status quo order and having failed to obtain a favourable order and without waiting for the outcome of her suit in O.S. No.98 of 2018, she has approached the GHMC Officials by lodging a complaint to demolish the property on the ground that it is in dilapidated condition. Thus, respondent No.4 is trying to get the relief which she failed to get from the Civil Court in O.S. No.98 of 2018.

viii) As discussed above, admittedly, respondent No.3 failed to follow the procedure laid down under the law. Respondent No.3 did not serve any notice on the petitioner while conducting the inspection. The report of the JNTU dated 26.04.2021 was prepared behind the back of the petitioner. It is also relevant to note that Section - 456 of the GHMC Act, 1955 deals with 'removal of structures, trees etc., which are in ruins or likely to fall'. Section - 459 deals with 'opportunity for stating objections', and as per which, the Commissioner shall issue a notice under sub-sections (1) and (2) of Section 456, after giving the owner or occupier, as the case may be, a reasonable opportunity of raising any objection and adducing evidence, if any. And after being satisfied that the objection which is raised is invalid or insufficient, the structure may be demolished.

ix) By-law No.14 (2) deals with 'examination of unsafe building, and as per which, the authority shall examine or cause to be examined every building reported to be unsafe or damaged, and shall make a written record of such examination.

x) In the case on hand, there is no written record prepared by the Authority.

There is no mention about the opportunity given to the petitioner to submit objections and consideration of the same in terms of Section - 459 of the GHMC Act, 1955.

xi) As stated above, a perusal of the notice including the notice dated 12.01.2021, impugned notice dated 01.06.2021 and the counter filed by respondent No.3 would reveal that there is no mention about giving opportunity to the petitioner to submit her objections. Thus, respondent No.3 has violated the entire procedure laid down under Sections - 456 and 459 and bye-law No.14 (2) of the Municipal Corporation Building Bye-laws, 1981 while issuing the impugned notice dated 01.06.2021. A perusal of the impugned notice dated 01.06.2021 and the report of the JNTU dated 26.04.2021 would reveal that the subject property is covered with only tin sheds, and there is no RCC roof. Even then, considering the said aspects, respondent No.4 approached respondent No.3 stating that it is in dilapidated condition and without appreciating the same, respondent No.3 has obtained report from the JNTU and issued the impugned notice which is illegal.

xii) The petitioner having had filed I.A. No.4 of 2021 to punish respondent Nos.2 to 4 for lying and committing perjury. As discussed supra, there is inter se dispute between the petitioner and respondent No.4 with regard to title over the subject property. The petitioner failed to make out any case to punish respondent Nos.2 to 4. Therefore, I.A. No.4 of 2021 is liable to be dismissed.

9. CONCLUSION:

i) For the reasons stated in the affidavit filed in support of the petitioner, I.A. No.3 of 2021 is allowed.

ii) As stated above, there is serious dispute with regard to the subject plot between the petitioner and respondent No.4, which is to be decided by a competent Civil Court but not by GHMC Authorities. Respondent No.4 has approached respondent No.3 complaining that the subject plot is in dilapidated condition and requested to demolish the same by suppressing the pendency of the above two suits and the status quo order passed by the Civil Court. Thus, respondent No.4 has approached respondent No.3 by suppressing the true and material facts. Respondent No.3 without following due procedure laid down under the Law issued the impugned notice dated 01.06.2021 which is illegal and arbitrary and, therefore the same is liable to be set aside.

iii) The present writ petition is accordingly allowed and the impugned notice No.422/DIL/TP/Cir.19/GHMC/2021, dated 01.06.2021 issued by respondent No.3 is hereby set aside. However, liberty is granted to the petitioner and respondent No.4 to take all pleas and contentions before the Civil Court in the aforesaid suits and other proceedings with regard to the ownership over the subject plot.

iv) For the aforesaid discussion, I.A. No.4 of 2021 filed by the petitioner is liable to be dismissed and accordingly the same is dismissed.

v) However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.”

After meticulously scrutinising the entire evidence, the learned Single Judge has allowed the writ petition. The facts further reveal that there is a serious dispute between the respondent No.1/writ petitioner and Smt. Bodi Saritha in respect of the property in question, they have filed writ petitions, they have filed criminal cases against each other and civil suits are also pending between them. However, the undisputed facts reveal that there is an order of status quo granted by the trial Court in the matter and in spite of there being a status quo order, attempts were being made to demolish the house in question. In those circumstances, the notice dated 01.06.2021 issued by the GHMC has been set aside and a liberty has been granted to the respondent No.1/writ petitioner and Smt. Bodi Saritha to take all the pleas before the civil Court in the pending civil suits.

In the considered opinion of this Court, the learned Single Judge was justified in passing the impugned order as the order of status quo is still pending. Therefore, this Court does not find any reason to interfere with the order passed by the learned Single Judge.

Another important aspect of the case is that in respect of the property dispute between the respondent No.1/writ petitioner and Smt. Bodi Saritha, the present writ appeal has been filed by the GHMC. The other respondent who is claiming the property has not filed any writ appeal. This itself raises a cloud over the functioning of the GHMC. However, we are not inclined to interfere with the order passed by the learned Single Judge. The parties shall be free to take recourse to the civil remedies in the civil suits, which are pending between them. The admission is declined.

The writ appeal is accordingly dismissed.

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