
(2021) 12 TEL CK 0052

In the Telangana High Court

Case No : Writ Petition No. 15349, 18393 Of 2021

Dr. M. Satchindananda Rao

APPELLANT

Vs

State Of Telangana And 3 Others

RESPONDENT

Date of Decision : 20-12-2021

Acts Referred:

Citation : (2021) 12 TEL CK 0052

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Final Decision : Dismissed/Allowed

Judgement

Since the dispute is with regard to the same property between the same parties, both these writ petitions are heard in common and disposed of with the Common Order.

W.P.No.15349 OF 2017

2-a. This Writ Petition is filed to declare the inaction of the 3rd respondent in not considering the representation submitted by the petitioner on 09.06.2021 complaining about the unauthorized construction made by the 4th respondent over the piece of land in Sy.No.116, situated at Telangana, contrary to the building permission, as illegal and also issue consequential direction to the respondent Nos.2 and 3 to cancel the permission vide permit No.3129/W1/2020/0103, dated 24.12.2020 in respect of Plot Nos.D4-Part and D5, in Sy.No.102, situated at Narsingi Village, Gandipet Mandal, Ranga Reddy District.

W.P.No.18393 OF 2021

2-b. This Writ Petition is filed to declare the order dated 28.07.2021 bearing proceedings No.1214/TPS/NMC/2021 passed by the 3rd respondent directing the 4th respondent to conduct re-survey with the assistance of the 5th respondent and meanwhile directing the petitioner to stop the construction over the land admeasuring 458.33sq.yards in plot No.D4 (Part) and D5 in Sy.No. 102, Westend

Meadows Layout, situated at Narsingi Village, Rajendra Nagar Mandal, Ranga Reddy District as illegal.

3. In W.P.No.15349 of 2021, heard Sri N.Lalitha Reddy, learned counsel for the petitioner, learned Government Pleader for Municipal Administration appearing for respondent Nos.1 and 2, Sri N.Praveen Kumar, learned standing counsel appearing for the 3rd respondent and Sri A.Venkatesh, learned counsel appearing for the 4th respondent.

3-a. in W.P.No.18393 of 2021, heard Sri A.Venkatesh, learned counsel for the petitioner, learned Government Pleader for Municipal Administration appearing for respondent Nos.1 and 2, Sri N.Praveen Kumar, learned standing counsel appearing for the 3rd respondent, learned Government Pleader for Revenue appearing for respondent Nos.4 and 5 and Sri N.Lalitha Reddy, learned counsel appearing for the 4th respondent.

4. FACTS OF THE CASE IN W.P.No.18393 OF 2021

i) The petitioner claims that he is the absolute owner and possessor of plot No.D4 (Part) and D5 situated in Sy.No.102 Westend Meadows Layout, situated at Narsingi Village, Rajendra Nagar Mandal, Ranga Reddy District.

ii) The Petitioner had applied for building permission on 04.07.2020 and the permission was accorded in respect of the subject property on 24.12.2020.

iii) Respondent No. 6 claims that the property claimed by the Petitioner falls in Sy.No.116 is owned by him.

iv) A complaint was filed by Respondent No. 6 on 09.06.2021 requesting Respondent No. 3 to stop the illegal construction as a suit bearing O.S.No.605 of 2015 is pending regarding the subject property; the application for layout regularization was rejected and; Petitioner had obtained permission in respect of property in Sy.No.102 but was making constructions in Sy.No.116.

v) In furtherance of the above said complaint, a notice dated 11.06.2021 was issued to the Petitioner to attend an enquiry. The Petitioner submitted his written submissions and additional written submissions. Thereafter, Respondent No.3 addressed a letter dated 11.06.2021 to Respondent No. 4 who in turn requested Respondent No. 5 to submit a location sketch of plot No. D4 and D5.

vi) Respondent No.5 in response stated that plot No.D4 and D5 fell in Sy.No.116, after which Respondent No.3 sent another notice dated 24.06.2021 and asked the Petitioner to submit his explanation within seven days of receipt of the notice.

vii) The Petitioner being aggrieved by the notice dated 24.06.2021 filed W.P. No.14585 of 2021 seeking to set aside the said notice. This Court, vide order dated 30.06.2021, disposed of the writ petition directing the Petitioner to submit his explanation along with relevant documents and also directed the official Respondents therein to furnish the copy of survey report and sketch to the Petitioner.

viii) While things stood thus, Respondent No. 6 filed W.P.No. 15349 of 2021 challenging the inaction of Respondent No.3 in considering the representation dated 09.06.2021 submitted by Respondent No.6 seeking cancellation of the building permission granted to the Petitioner.

ix) Pursuant to the order passed in W.P.No.14585 of 2021, Respondent No. 3 issued another notice asking the Petitioner to appear and submit the relevant documents on 26.07.2021. The Petitioner submitted his explanation and all the relevant documents.

x) On 28.07.2021, Respondent No. 3 passed an order vide Proc. No.1214/TPS/NMC/2021. In the said order, a re-survey was ordered and the Petitioner was directed to stop the construction work until the re-survey was completed, on the grounds that a suit vide O.S.No.605 of 2015 is pending regarding the subject property, the application for layout regularization was rejected and petitioner had obtained permission in respect of property in Sy.No.102 but was making constructions in Sy.No.116.

xi) Therefore, the present writ petition.

5. CONTENTIONS OF THE PETITIONER

i) The Petitioner filed various documents to show the flow of title. The Petitioner became the owner of the subject property through a registered sale deed bearing Doc. No. 2677 of 2008.

ii) Survey Nos. 98 (part), 99 (part), 100 to 102, 104, 106, 108 to 116, 118 to 123, 124, 125 and 168 which also included the subject property were carved out by P. Ravinder Reddy (Predecessor- in-title) to form a layout under the name "Westend Meadows".

iii) An application dated 03.06.2005 was made to the erstwhile HUDA for regularization and a reply was received on 06.08.2006 but the said layout was not followed up. However, 'Westend Meadows' which includes the subject property was regularized by the predecessors-in-interest availing the benefit of G.O. Ms. No. 902 vide proceedings bearing No.32025/LPS/HMDA/PLG/2009 dated 22.11.2011.

iv) A suit bearing O.S.No.605 of 2015 was filed by Respondent No.6 for Declaration, Recovery of Possession and mesne profits in respect of Ac.3-31 Gts. in Sy.No.102, 114, and 116. In the said suit, I.A. No.331 of 2015 and I.A.No.332 of 2015 were filed for temporary injunction and seeking direction to restrain the defendants therein from changing the nature of the suit schedule property, respectively. Both the Interlocutory Applications were dismissed vide order dated 29.06.2020 and the Trial Court observed that the Revenue Court did not recognize the vendors of Respondent No.6 as owners of the property. Against the order of the Trial Court, an appeal was preferred vide C.M.A.No.14 and 15 of 2021, the same were also dismissed.

v) Mere pendency of civil suits is not a ground to reject building permissions. The authorities while considering an application for building permission shall only see if prima facie title exists and cannot conduct a roving enquiry. Reliance was placed on Hyderabad Potteries v. Collector, Hyderabad District 2001 (3) ALD 600= 2001 (3) ALT 200 and K.Pavan Raj v. Municipal Corporation of Hyderabad 2008 (1) ALD 792.

vi) Dismissal of I.A.No.331 of 2015 and I.A.No.332 and its upholding in C.M.A No.14 and 15 of 2021 confirms that Respondent No. 6 had no prima facie case and establishes the Petitioner's prima facie title and possession.

vii) Although the sale deed of the Petitioner mentions Sy.No.102 nominally, the subject property forms part of 'Westend Meadows' which was regularized. The boundaries mentioned in the sale deed will prevail over survey numbers. Reliance was placed on Philomena Education Vs. the Chief Controlling (2012) 4 ALD 420, Subba Rao Vs. Azizunnisa Begum (1985) 2 APLJ (HC) 149, Chandraiah Vs. Narayana (2008) 4 ALD 695 and Rukmini Bai Vs. K.Mohanlal 2011 (106) AIC 294.

viii) Respondent No.3 in the impugned order dated 28.07.2021 without considering the explanation submitted by the Petitioner, ordered a re-survey and restrained him from making any further constructions.

ix) The impugned order dated 28.07.2021 is violative of the Board Standing Orders and Circulars which mandate that survey can be conducted only at the instance of owner and not a third party.

x) Respondent No.3 cannot venture into the area of disputed facts by ordering a survey when O.S.No.605 of 2015 is pending before the Civil Court.

6. CONTENTIONS OF THE RESPONDENT No.6

i) Respondent No.6, disputing the title of the Petitioner, claims that he is the absolute owner of the subject property. The subject property falls in Sy. No.116 and not in Sy.No.102.

ii) The Petitioner has obtained permission to construct in Sy.No.102 but is making construction in Sy.No.116.

iii) The Petitioner himself has admitted that the layout application made to HUDA was not followed up, therefore, the layout and the sale deed of the Petitioner are in question.

iv) The sale deed of the Petitioner is a sham and fictitious document to usurp the subject property.

v) The claim of the Petitioner that boundaries prevail over survey numbers is a misleading statement.

vi) Mere grant of electricity connection or regularization of the property or mutation of the property or building permission does not allow the Petitioner to

usurp any other property or confer title.

vii) Dismissals of I.A. No.331 of 2015 and I.A.No.332 of 2015 in O.S. 605 of 2015 and C.M.A No. 14 and 15 of 2021 does not permit the Petitioner to proceed with illegal construction in Sy.No.116 which is contrary to the building permission obtained by him.

viii) The Petitioner instead of participating in the re-survey has approached this Court to delay the matter.

FINDINGS OF THE COURT

7. The facts of the case reveal that after satisfying itself Respondent No.3 had granted the building permission dated 24.12.2020. It is not in dispute that a suit vide O.S.No.605 of 2015 filed by the 6th respondent seeking for declaration of title, delivery of possession and for mesne profits in respect of the property admeasuring Ac.3.31guntas in Sy.Nos.102, 114 and 116. It is also not in dispute that the petitions vide I.A.Nos.331 of 2015 and 332 of 2015 in O.S. 605 of 2015 seeking temporary injunction restraining the defendants therein including the petitioner herein/U.Alexander Reddy, from changing nature of the suit schedule property were filed and the same were vide order dated 29.06.2020 both the petitions were dismissed. It is also not in dispute that the said dismissal orders were confirmed in the C.M.A Nos.14 and 15 of 2021. In the said orders, the Division Bench of this Court categorically held that the 6th respondent failed to establish prima facie case, title and possession over the subject property. Thereafter, the 6th respondent herein has lodged a complaint, dated 09.06.2021 with the 3rd respondent, who in turn, vide order dated 28.07.2021 directed for re-survey of the subject land and directed the petitioner herein to stall the construction activity.

8. In view of the said rival contentions, the question before this Court is whether Respondent No.3, while considering a complaint questioning grant of building permission, order a re-survey and stay the construction activity.

9. This issue is no more res-integra. It was held that while granting building permission the concerned authorities shall only see if the applicant has prima facie title.

10. A Division Bench of this Court in Mir Asad Sayeed Khan Asad Khan v. The State of Telangana MANU/TL/0208/2021 after discussing various judgments has held as follows:

27. The main issue raised in the Writ Appeal is covered by the decision of a Division Bench of this Court in A.Shalivahana Reddy v.The Greater Hyderabad Municipal Corporation- W.P.Nos.14881 and 14885 of 2020 decided on 27.11.2020

28. In that case, this Court had reviewed the legal position regarding powers of the Commissioner, GHMC under the GHMC Act, 1955 in regard to consideration of Applications for building permission made to him.

29. In the said case, this Court held: "....."

24. In exercise of the powers conferred by Section 589 of the Act, the then Government of Andhra Pradesh accorded sanction to the Bye-laws approved by the General Body of Municipal Corporation of Hyderabad in its Resolution No. 561, dated the March, 1981.

25. These Bye-laws are called "The Municipal Corporation Building Bye-Laws, 1981".

26. Bye-law No. 4.2 prescribed the various documents to be filed and requirements to be complied with while filing the application for building permit. Clause (v) of the said Bye-law stipulates that every application for building permit shall be accompanied by the attested copy of the original sale/lease deed; and attested copy of Revenue Survey Sheet/Municipal Survey Sheet with Mutation Record No. or affidavit or other documents acceptable to the Commissioner, MCH, as proof of ownership of the applicant.

27. The scope and ambit of the power of the Commissioner of the Municipal Corporation under Section 428 and 429, in particular, to the extent of his power to examine the title of the applicant for building permit has fallen for consideration of this Court in Hyderabad Potteries Private Limited v. Collector, Hyderabad MANU/AP/0361/2001 : 2001(3) ALD 600. In para 40 of the said judgment it is held thus:

"Of course, the Commissioner has to consider the objections, if any, raised for grant of permission. But, an objection raised by a member of the Committee itself would not be enough to reject the application for grant of permission. The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector (s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more." (emphasis supplied)

This decision was approved by order dt. 24-12-2001 in W.A. No. 1096 of 2001 ; and in State of A.P. Vs. Pramila Modi and others MANU/AP/0170/2005 : 2005 (4) ALD 105 (DB), it is stated that the decision in Hyderabad Potteries (supra) was also confirmed in Supreme Court. The said decision has been followed in several cases by this Court.

28. In T. Rameshwar vs. Commissioner, Municipal Corporation of Hyderabad and Ors. ANU/AP/0156/2006 : (2006) 3 ALD 337, a single Judge of this court held:

"The law as interpreted by this Court with reference to HMC Act and the Act, which requires the Commissioner to consider the objections, as and when they are raised, for grant of permission on the ground of title in a pragmatic manner taking into consideration only prima facie factors. While doing so, the Commissioner cannot assume the role of an adjudicator or arbitrator and decide the title inter se between the applicant for building permission and the objector of such building permission. If the applicant is able to show that prima facie such applicant has a right to proceed with the construction notwithstanding the pendency of any litigation by way of a suit or other proceeding subject to the applicant applying the certain conditions, the Commissioner may either grant permission or postpone the grant of permission." (emphasis supplied)

29. This legal position is not disputed by the learned Special Government Pleader.

30. In our opinion, the Commissioner of GHMC is not empowered to entertain title dispute and adjudicate the same before disposing of the Application for grant of building permission.

31. Sections 428 and 429 and Clause (v) of Bye-Law No. 4.2 envisage filing of copies of title deeds and there is no provision under which the Commissioner can reject building permission on the ground of title dispute as held in Hyderabad Potteries Private Limited (3 supra).

32. In K. Pavan Raj (supra), this Court held following the decision in Hyderabad Potteries (supra) :

"If any objection regarding title is received, the Commissioner is required to be prima facie satisfied about the Applicant's title to the property and his lawful possession of the same and he cannot decide title dispute because that is not one of the duties assigned to him and he is not provided with any adjudicatory mechanism.

A person setting up a rival claim of title is free to approach the Court of competent jurisdiction and seek appropriate relief in that regard.

If the applications for building permissions are rejected merely on the ground of third parties raising disputes of title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title.

So, as a matter of law if the Commissioner is prima facie satisfied about legal title of the Applicant and his lawful possession, he is bound to consider the Application for building permission on merits leaving the objector free to approach an appropriate court of law." (emphasis supplied)

33. We agree with the above observations in the above case that if applications for building permissions are rejected merely on the ground of third parties raising

disputes of title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title." (emphasis supplied)

30. It is also not in dispute that the said order was confirmed by the Supreme Court of India in SLP (C) No. 1702 - 1703 of 2021 dt. 27.01.2021 in GHMC and others v. A. Salivahana Reddy.

31. The view expressed in the above decision is similar to that which is expressed by the Supreme Court in State of Gujarat v. Patil Raghav Natha MANU/SC/0406/1969 : (1969) 2 SCC 187 (supra).

32. In our considered opinion, even though the appellants have set up a rival claim to the title claimed by respondent No. 4 to the subject property, admittedly appellants 1 to 11 had already filed O.S. Nos. 1289 to 1295 of 2020 before the XXI Junior Civil Judge, City Civil Court, Hyderabad. They also claimed that they have even obtained status quo order on 16.07.2020 which, according to them, is subsisting. The relief claimed in the said suits is cancellation of 7 gift deeds being relied upon by the 4th respondent for claiming right, title and interest in the subject property. Therefore, the Civil Court will undoubtedly decide whether the appellants or respondents 4 to 9 have title to the subject property.

33. Merely because the appellants had objected to the building permission Application made by respondent No. 4 for construction in the subject property setting up rival title, the Commissioner cannot adjudicate title thereto, since the Commissioner, GHMC (2nd respondent) has no power to adjudicate such title dispute.

34. So it cannot be said that he committed any error in stating that he cannot decide title aspects, that he would go only on prima facie title.

35. Admittedly, having satisfied himself about the prima facie title of respondents 4 to 9, building permission was granted by him on 12.10.2020.

36. As held by the learned Single Judge in K. Pavan Raj v. The Municipal Corporation of Hyderabad MANU/AP/0747/2007 : 2008(1) ALD 792 (supra), if the applications for building permissions are rejected merely on the ground of third parties raising disputes of title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title.

37. We not for a moment saying that the claim set up by the appellants falls in the said category, but we are merely restating the principle that merely because there is an objection raised by a third party (appellants) setting up rival title to the property where building permission was sought by the respondent no. 4 before the GHMC, the Commissioner is not denuded of the power to grant such permission.

38. In our opinion, rightly the 2nd respondent had directed appellants 1 to 11 to

pursue their remedies in civil Court for redressal of their grievance and the learned single Judge also rightly did not interfere with the said order.

39. We are also of the opinion that the earlier orders passed on 08.06.2020 in W.P. Nos. 10248 and 11633 of 2020 cannot be said to alter the legal position laid down in *State of Gujarat v. Patil Raghav Natha* MANU/SC/0406/1969 : (1969) 2 SCC 187 (supra) and *Hyderabad Potteries Private Limited v. Collector, Hyderabad* MANU/AP/0361/2001 : 2001(3) ALD 600 (supra) apart from *T. Rameshwar vs. Commissioner, Municipal Corporation of Hyderabad and Ors* MANU/AP/0156/2006 : (2006) 3 ALD 337 (supra) and *K. Pavan Raj v. The Municipal Corporation of Hyderabad* MANU/AP/0747/2007 : 2008(1) ALD 792 (supra).

40. The Commissioner therefore cannot be compelled to decide the title dispute if it is complex in nature and he is entitled to proceed on the basis of prima facie title of the applicant for grant of permission.

41. We also disagree with the contention of the learned counsel for the Appellants that the learned Single Judge should have allowed the Writ Petition and held that any building permission for construction should be granted by the 2nd respondent only subject to resolution of the dispute of title. Such a contention runs clearly contrary to the decision in *K. Pavan Raj v. The Municipal Corporation of Hyderabad* MANU/AP/0747/2007 : 2008(1) ALD 792 (supra) which was approved in *A. Shalivahana Reddy v. The Greater Hyderabad Municipal Corporation and others* by the Division Bench of this Court.

11. Therefore, the law is clear that the concerned authority before granting permission should only see if prima facie title exists. The authorities cannot express any opinion on the title of the property, neither can they decide inter se disputes of title. The authorities cannot decide complicated questions of facts like title and validity of documents which will be decided by a jurisdictional/competent civil Court. Further, mere pendency of a civil suit or disputes regarding title will not impede the concerned authority from granting building permission, if it is satisfied that prima facie title exists.

12. However, the question of what constitutes 'prima facie title' is unclear. It is often the case that while deciding the question of 'prima facie title', the authorities go on a fishing expedition and a fact-finding mission, which is impermissible. Therefore, it is necessary to determine the factors to be considered by the concerned authority while deciding the existence of 'prima facie title'. According to the Black's Law Dictionary 9th Edition, the terms 'title' and 'prima facie' have the following meaning:

TITLE:

title. (15c) 1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself.

2. Legal evidence of a person's ownership rights in property; an instrument (such

as a deed) that constitutes such evidence

PRIMA FACIE:

prima facie, adv. At first sight; on first appearance but subject to further evidence or information

prima facie, adj. Sufficient to establish a fact or raise a presumption unless disproved or rebutted.

13. 'Prima facie title', therefore, is said to exist when the person claiming such title places material on record to prove his ownership over the property. Such material means and includes all the documentation linking the person claiming the property and the property itself. The documents placed on record should on a bare perusal show that the applicant is the owner of the property. To clarify further, the municipal authorities while granting permission have to consider the following while examining the existence of 'prima facie title':

i. The applicant should have possession of the property over which permission is claimed. The term possession herein not only includes physical possession but also constructive possession. In other words, the concerned authority should see whether the applicant has control/custody over the property. Possession can be proved by ancillary documents like property tax receipts, mutation proceedings, electricity receipts, etc.

ii. The authorities should verify the documents showing the flow of title which vests ownership rights in the applicant. These documents include sale deeds and link documents.

If the concerned authority, after a bare perusal of the submitted documents, is of the opinion that the applicant has possession over the property and has submitted the required documents establishing the flow of title, it can grant building permission on the ground of existence of 'prima facie title'. If the concerned authorities want to seek clarifications regarding the documents submitted, they cannot conduct a roving enquiry to see if the applicant is the owner of the property.

14. In light of the aforesaid, Respondent No.3 has no authority to conduct a roving enquiry by ordering a re-survey. While granting permission it had satisfied itself that the Petitioner had a 'prima facie title'. Merely because it had received a complaint that a suit is pending, it cannot revoke the building permission.

15. It is relevant to note that in the present case, though the 6th respondent in the complaint dated 09.06.2021 mentioned about the filing of suit O.S.No.605 of 2015 but he did not mention about filing of the C.M.A.Nos. 14 and 15 of 2021 and dismissal of the same by a Division Bench of this Court. In fact, there is suppression of facts by the 6th respondent in the complaint dated 09.06.2021.

16. The dispute regarding identification of the property is to be decided by the competent civil court. Therefore, the order dated 28.07.2021 bearing

proceedings No. 1214/TPS/NMC/2021 passed by Respondent No.3 directing Respondent No. 4 to conduct re-survey with the assistance of Respondent No.5 is not sustainable and the same is liable to be set aside.

17. Coming to the W.P.No.15349 of 2021 filed by the 6th respondent in W.P.No.18393 of 2021, as discussed supra, since the 3rd respondent has already considered his representation dated 09.06.2021, the same is infructuous and is liable to be dismissed as infructuous.

CONCLUSION

18. In the result, the W.P.No.18393 of 2021 is allowed setting aside the order dated 28.07.2021 vide proceedings No.1214/TPS/ NMC/2021 passed by Respondent No.3.

19-a) The W.P.No.15349 of 2021 is dismissed as infructuous.

b) There is no order as to costs.

c) As a sequel, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.