
(2007) 03 AP CK 0022

In the Andhra Pradesh High Court

Case No : CMA No's. 41 and 83 of 2007 and CMP No. 206 of 2007 in CMA No. 41 of 2007

Executive Officer, Secunderabad Cantonment Board

APPELLANT

Vs

Auro Swamy and Others

RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Cantonments Act, 1924 — Section 10, 179, 181
Civil Procedure Code, 1908 (CPC) — Section 151, 80

Citation : (2007) 4 ALD 796 : (2007) 5 ALT 786

Hon'ble Judges : M. Venkateswara Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : K.R. Koteswara Rao, in CMA No. 41 of 2007 and A. Rajasekhar Reddy, Assistant Solicitor General of India in CMA No. 83 of 2007, for the Appellant; B. Vijaysen Reddy, for M. Govinda Reddy, for the Respondent

Judgement

B. Prakash Rao, J.—Since these two appeals arise out of the same order passed by the Court below, they have been taken up together for disposal.

2. Heard Sri K.R. Koteswara Rao, learned Counsel for the appellant in C.M.A. No. 41 of 2007, Sri A. Raja Sekhar Reddy, learned Assistant Solicitor General of India on behalf of the appellants in CMA No. 83 of 2007 and Sri B. Vijaysen Reddy appearing on behalf of the learned Counsel Sri M. Govind Reddy for the respondents/ plaintiffs.

3. The briefly stated facts giving raise to these proceedings are that the respondents/ plaintiffs had filed a suit for perpetual injunction against both the appellants who are arrayed as defendants 1 and 2 respectively restraining them from interfering with the construction activity carried on by the respondent/ plaintiffs. Pending the said suit, the appellants had filed the present applications seeking for the selfsame relief though as an ad-interim injunction pending disposal of the suit. The case of the appellant/ plaintiffs in the suit and as well as the affidavit filed in support of the application is to the effect that they are the

owners of various portions in premises bearing Nos. 186, 186/A, 186/A/1, 186/B in Sy. No. 270 situated in Thokatta Village, Bowenpally, Secunderabad. Having purchased the same under three different registered sale deeds from the previous owners and since then they have been in possession and enjoyment and paying the taxes as well. A part of the property is being used by them for running a small scale industry for manufacture of cement hollow bricks, jallis, doors and window frames etc., for which no objection has been granted by defendant No. 2-the Cantonment Board in respect of the premises bearing No. 186, Thokatta Village, Bowenpally Secunderabad. That apart, there are several other constructions which are existing in the very same property. Since the plaintiff deal in motor cycles and other vehicles they applied for dealership of Maruthi Udyog Limited and who after negotiations issued a Letter of Intent dated 20-5-2006 appointing them as a dealer and approving the suit premises to be used as a showroom and as a workshop. Of the said authorization, the area selected by the Maruthi Udyog Limited for the workshop is located in the aforesaid premises. Therefore, plaintiff No. 4 applied to defendant No. 1 on 27-4-2006 for grant of licence to run the workshop and also applied to defendant No. 2 on 26-7-2006 for permission to erect temporary structure for the said purpose. However, no objection has been raised nor there is any refusal on their part. In view of the said silence, it is stated that the permission is deemed to have been granted after expiry of the statutory period, therefore, they had commenced erection of the sheds in September, 2006. While the work was in progress the officials of defendants 1 and 2 without any prior notice or intimation came to the spot on 29-9-2006 and demolished the structure and carried away the construction machinery. The said action according to the plaintiffs is contrary to the provisions of the law and especially that of the Cantonments Act, as no notice of show-cause has been issued, therefore, entire such action on their part is totally illegal. Further, it is the case of the plaintiffs that the nature of structure which they are erecting is purely a temporary in its nature and therefore there is no impediment in making such temporary construction or erection and thus either of the defendants 1 and 2 have any authority in law to take such one sided action. Hence, the suit and hence, the application.

4. Contesting the said application the case of the defendant No. 1 was to the effect that the nature of construction which is being raised by the plaintiffs is not temporary as such but is a pucca and permanent one and without making a formal application and obtaining a permission as required u/s 179 of the Cantonments Act no person can raise any structure. Further, it is also their case that no sanction is obtained for the lay out as per Section 181 of the said Act, therefore, the plaintiffs cannot raise any such structures and their entire such action is totally illegal. Further, it is the specific case of defendant No. 1 that no proper application has been filed seeking any permission or no proper application has also been submitted for such sanction and instead the plaintiffs have only submitted a letter to defendant No. 2 and sought permission to raise temporary shed, therefore, there is no proper follow up of the procedure as contemplated

under the provisions of Cantonments Act. Therefore, soon after receipt of the information of the structures being raised the authorities have taken appropriate action. That apart, it is also their case that the schedule property is under the management of Defence Estate Officer, A.P. Circle, Secunderabad and since the property is vested with the Central Government, Ministry of Defence, and occupancy rights are vested in Smt. Rani Mahaboob Bi W/o. Raja Iqbal Chand, therefore, the plaintiffs have no right as such. Further it has been pointed out that even as per the proceedings under the Urban Land Ceiling Act, 1976 the property has been vested with the Central Government as the declared excess land as per the provisions of Section 10 of the said Act. Thus, absolutely there is no prima-facie case much less balance of convenience in their favour and they are not entitled to any injunction. Defendant No. 2 who is the appellant in the other appeal in CMA No. 83 of 2007 virtually reiterates the selfsame reliefs as that of defendant No. 1. The appellant in the other appeal, apart from raising a plea that the very suit itself is hit for want of notice u/s 80 CPC, refer to the proceedings which have gone up to the Supreme Court in Civil Appeal No. 8484 of 1977 and also that of the decision of this Court in W.A. No. 936 and Batch dated 14-8-2003 to show that the property vests with the Government and the same is declared as excess property and the petitioners have no right at all. Even otherwise, it is their case that proper action under the provisions of Public Premises (Eviction or Unauthorised Occupants) Act, 1971 has already been initiated against the plaintiffs and therefore, no injunction need be granted.

5. With these and other allegations as contained in the respective pleadings and after considering their submissions the Court below allowed the said application and granted injunction in favour of the respondent/ plaintiffs mainly on the ground that there is a prima-facie case in their favour and also that the balance of convenience swings to their benefit. Hence, these two appeals.

6. The main submission made by the learned Standing Counsel and also the learned Assistant Solicitor General appearing in these two appeals is to the effect that the very construction being a permanent in its nature and not a temporary shed as such, requires a permission and without which the plaintiffs could not have proceeded with, and even otherwise, the plaintiffs have no right, title, interest of whatsoever nature since the said property is already vested with defendant No. 2-the appellant in CMA No. 83 of 2007, therefore, the Court below did not consider these aspects in proper perspective. Thus, the granting of injunction is only unsustainable.

7. Repelling these contentions Sri B. Vijaysen Reddy on behalf of the learned Counsel Sri M. Govind Reddy for the respondents/plaintiffs sought to sustain the orders mainly on the ground that having regard to the fact that the respondents/ plaintiffs are in possession and as long as they continue to remain in possession they are entitled to make use thereof and enjoy the same till appropriate action is taken by either of these authorities for any illegal construction by issuance of notice and also by due proceedings under the Public Premises (Eviction or

Unauthorised Occupants) Act, 1971 and therefore, any construction made which according to them being only a temporary nature is always subject to the final action taken by either of these authorities. Therefore, there is absolutely no illegality in proceeding with the construction and the Court below was right in granting injunction in their favour.

8. Considering these submissions and also on perusal of the material on record, the point which arises for consideration is as to whether the respondents/plaintiffs have made out any prima facie case or balance of convenience for entitling any interim injunction pending the suit.

9. From the submissions made and also on a perusal of the material on record, there is no dispute to the fact that admittedly the plaintiffs did not obtain any prior permission for construction and there is a serious dispute in regard to the very nature of the construction whether it is a temporary or permanent. The case of the appellant is that the nature of construction is quite a permanent one and a pucca which squarely attracts Section 179 of the Cantonments Act which contemplates a prior permission for making any such construction whereas the case of the respondents is that the structure is only temporary shed for the purpose of workshop and therefore does not warrant any provision. Even otherwise, they have already applied to defendant No. 2 and there is no reply, therefore, they are entitled to proceed.

10. Earlier, after having heard the learned Counsel on both sides, with a view to ascertain the nature of construction, this Court appointed an Advocate-Commissioner to make a local inspection as per the orders dated 19-2-2007 appointing Smt. D. Pramada, learned Counsel with a direction to inspect the premises and submit a report and accordingly the learned Counsel after making inspection submitted a report along with the photographs and also the maps showing the proposed construction. To the said report, the respondent/plaintiffs have filed their objection. As per the said report, it is quite evident that an excavation for basement, for construction of a compound wall of 400 feet length from north to south and 284 feet from east to west with a dimension of 1 1/2 to 2 feet and further they have already dug 56 pits for construction of the proposed shed leaving 53 feet on the west side, 117 feet on the east side, 34 feet on the northern side and 18 feet on the southern side. There are 7 rows of pits from east to west comprising of 8 in each row from north to south. Inside these pits, columns of 3.2 ft. x 2.4 ft. dimensions of 2 ft. height were raised as footing to the iron girdle to be raised on the columns with the help of bolts and nuts and there are iron frames on the site to be fixed on these iron girdles on which they are going to put asbestos sheets and construct sheds having dimensions of 126 feet north to south and 114 feet east to west. There are bricks, granite stones, metal, sand, iron girdles and iron frames lying on the site as shown in the photographs. The proposed shed is with a dimension of 28 ft. x 39 ft. and on the south-west corner also two sheet top rooms are existing with dimension of 23 ft. from east to west and 15 ft. from north to south.

11. The aforesaid observation, vis-a-vis a rough sketch, has been filed along with the said report and the photographs would clear the case that the nature of construction can certainly be said to be not of any temporary nature but a pucca construction and a pucca shed is being sought to be raised. Admittedly, the respondent/ plaintiffs have not applied to defendant No. 1/ the appellant in CMA No. 41 of 2007 for raising any such structures or seeking any permission therefore nor there exists any prior permission in their favour for raising such structure. Therefore, prima-facie, we are of the view that having regard to the nature of structure, which is proposed to be raised by the respondent-plaintiffs, necessarily it warrants a prior permission from defendant No. 1 and without which no such structures could have been raised. It is not necessary to go into at this stage to other aspects which are involved in the main suit having regard to the nature of pleas raised from both sides. There is also now a specific plea raised on behalf of the respondent No. 2 who is the appellant in the other appeal in CMA No. 83 of 2007 claiming that it is they who are the real owners since the property had been vested in them as excess land under the provisions of Urban Land Ceiling Act and therefore, including the respondent/plaintiffs would not make any claim of any right, title or interest. Further, the said appellant has already initiated the proceedings under the provisions of the Public Premises (Eviction or Unauthorised Occupants) Act, 1971 for seeking eviction of the plaintiffs. Be that as it may, the fact remains that there is no prior permission nor any application is pending with the main competent authority i.e., defendant No. 2 who has to grant any permission to make such construction, therefore, respondents/plaintiffs had not made out any prima facie case to seek indulgence in their favour. These aspects have not been properly considered by the Court below through proper perspective except to the fact that the respondent/plaintiffs are in possession. It is always open for the respondents/plaintiffs to file proper applications before defendant No. 1 which we assure that the would be considered and disposed of on merits and in accordance with law and it is needless to mention that till after they make such applications and obtain necessary permissions for such constructions, they are not entitled to raise any construction, of whatsoever nature as sought to be proposed as evident from the report of the Commissioner. In view of the same, we do not find any justification in the claim made by the respondent/plaintiffs seeking any indulgence for such temporary reliefs. Having regard to the same, we held that the respondents are not entitled to the injunction as sought for.

12. Accordingly, both the civil miscellaneous appeals are allowed and the orders of the Court below in I.A. No. 3845 of 2006 dated 23-12-2006 are set aside. Subject to the observations made above, the lower Court is also directed to expedite the disposal of the main suit as early as possible not later than within a period of three months from the date of receipt of a copy of this order. No costs.

CMP No. 206 of 2007 in CMA No. 41 of 2007

1. On behalf of the respondents this application has been filed purported to be u/

s 151 CPC though more in the nature of Order 41 CPC to receive plans of construction enclosed along with the application.

2. Even on a look at the proposed plans it is quite evident that the nature of proposed structure is not of any temporary nature but are of pucca and permanent.

3. Having regard to the orders passed in the main appeal, the CMP is ordered accordingly. Office is directed to send back the documents received along with the application to the Court below.