
(2021) 10 TEL CK 0050

In the Telangana High Court

Case No : Writ Petition No. 12898 Of 2021, I.A. Nos. 3, 4 Of 2021

Ghousia Begum

APPELLANT

Vs

State Of Telangana And 3 Others

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Greater Hyderabad Municipal Corporations Act, 1955 — Section 456, 456(1), 456(2), 457, 458, 459

Citation : (2021) 10 TEL CK 0050

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Mirza Nisar Ahmed Baig Nizami, learned counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing on behalf of respondent No.1, Mr. Pasham Krishna Reddy, learned Standing Counsel for GHMC appearing on behalf of respondent Nos.2 and 3 and Mr. C. Naresh Reddy, learned counsel for respondent No.4.

2. This writ petition was filed to declare the notice bearing No.422/DIL/TP/Cir.19/GHMC/2021, dated 01.06.2021 issued by respondent No.3 under Section - 456 of the GHMC Act, 1955 as illegal, and for a consequential direction to respondent Nos.1 to 3 not to act as per the whims and fancies of respondent No.4 and to award compensation in favour of the petitioner.

3. I.A. No.3 of 2021 was filed by the petitioner seeking to amend the writ petition including the prayer (b1) to the effect that 'to declare the action of respondent No.4 herein in initiating the false, fictitious and frivolous legal proceedings against the petitioner as highly illegal, arbitrary and violation of petitioner's fundamental rights and consequently restrain her from initiating any other or further legal proceedings against the petitioner', whereas, I.A. No.4 of 2021 was filed to punish respondent Nos.2 to 4 for lying and committing perjury before his Court.

4. CONTENTIONS ON BEHLAF OF THE PETITIONER:

i) Mr. Mirza Nisar Ahmed Baig Nizami, learned counsel for the petitioner would submit that originally, Smt. Fatima Bee, the mother of the 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, which is hereafter referred to as 'subject plot'. She had acquired the said property by virtue of a Patta Certificate dated 12.06.1981 issued by the then Government of Andhra Pradesh.

ii) He would further submit that during life time of Smt. Fatima Bee, she had executed a Gift Settlement Deed dated 19.07.1996 in favour of her daughter, the petitioner herein, in respect of the subject plot. Thereafter, the petitioner herein constructed a residential house and got it assessed in her name. A municipal number 4-3-237/422 was assigned to the subject plot. Thus, the petitioner herein has been in physical possession and enjoyment of the subject plot from 12.06.1981.

iii) According to him, the petitioner and her mother have been in uninterrupted possession of the subject plot since last 42 years. Respondent No.4 herein started interfering with her possession and enjoyment claiming that she is the owner of the subject plot under a registered sale deed bearing document No.2748 of 2016, dated 09.05.2016. According to respondent No.4, her vendor, Smt. M. Pushpalatha, had purchased the subject plot from the mother of the petitioner under a registered Agreement of Sale - cum - General Power of Attorney (AGPA) bearing document No.1563 of 2007, dated 27.04.2007. On the strength of the said AGPA, respondent No.4 had purchased the subject plot from her vendor under a registered sale deed bearing document No.2748 of 2016, dated 09.05.2016. Whereas, according to the petitioner, the said AGPA and the sale deed are forged and fabricated as her mother passed away on 03.05.2014 and, therefore, the question of execution of sale deed in favour of the petitioner does not arise.

iv) When respondent No.4 interfered with the peaceful possession and enjoyment of the petitioner over the subject plot, she had filed a suit vide O.S. No.482 of 2017 on the file of V Junior Civil Judge, City Civil Court, Hyderabad against respondent No.4 seeking perpetual injunction, and after hearing both sides, the learned Judge had granted interim orders directing to maintain status quo. Respondent No.4 had also filed a suit vide O.S. No.98 of 2018 on the file of XXI Junior Civil Judge, City Civil Court, Hyderabad against the petitioner for eviction, recovery of arrears of rent and damages. The petitioner herein has taken steps to club and try both the suits together.

v) Respondent No.4 filed I.A. No.12 of 2018 in O.S. No.98 of 2018 seeking deposit of arrears of rent and the same was dismissed by the trial Court on the ground that prima facie there is no evidence to show that the petitioner herein is a tenant of respondent No.4. Thus, by filing the suit in O.S. No.98 of 2018,

respondent No.4 has admitted that the petitioner herein is in possession of the subject plot. Four criminal cases were filed against the petitioner herein. Respondent No.4 and the petitioner filed writ petitions against each other before this Court and the same are pending. Respondent Nos.2 and 3 never visited the house of the petitioner and they have obtained the alleged report from the JNTU behind the back of respondent No.4 without serving any notice. On the strength of the said alleged report said to have been obtained from JNTU, respondent No.3 had issued the impugned notice instructing the petitioner to vacate the subject plot immediately so as to demolish the same on the ground that it was in dilapidated condition. The impugned notice is in violation of the provisions of the GHMC Act, 1955, more particularly, Sections - 456, 457, 458 and 459 and Bye-law No.14 of the Municipal Corporation Building Bye-laws, 1981.

vi) With the aforesaid submissions, the learned counsel sought to set aside the impugned notice dated 01.06.2021 issued by respondent No.3.

5. CONTENTIONS OF RESPONDENT Nos.2 & 3:

i) Referring to the contents of the counter filed on behalf of respondent Nos.2 and 3, Mr. Pasham Krishna Reddy, learned Standing Counsel, would contend that the office of respondent No.3 had received a complaint from respondent No.4 stating that the building is in dilapidated condition. Accordingly, respondent No.3 had issued a notice to the owner i.e., respondent No.4 herein and instructed the concerned engineer to inspect the site and submit a report. The concerned Municipal Engineer advised to refer the matter to the JNTU for obtaining opinion regarding the condition of the building. Accordingly, respondent No.3 had obtained the report from the JNTU dated 26.04.2021, wherein it had opined that the building is in dilapidated condition.

ii) The learned standing counsel would submit that accordingly respondent No.3 had issued notice to the petitioner and respondent No.4 on 01.06.2021. The petitioner initially refused to receive the said notice and she has abused the lower staff of the GHMC. Therefore, they have affixed the said notice on the wall of the subject plot. The petitioner did not give any reply. As per the inspection, the physical condition of the building is pathetic and the walls are weak as water is sinking into the walls. The ACC sheets are damaged and if it rains, the water may seep into the walls. The structure may collapse at any point of time. The structures are not safe for habitation and advised to demolish.

iii) The learned standing counsel would further contend that as per the records of respondent No.3, there is a letter dated 25.07.2017 addressed by the District Collector, Hyderabad to the Principal Secretary stating that the petitioner herein is in illegal occupation of the house and had obtained a Form-D Patta vide G.O.Ms.No.58. She submitted a Gift Deed from her mother, if the gift deed is valid, she does not need a patta certificate under G.O.Ms.No.58. In order to obtain Form-D patta, she submitted a false electricity bill and property tax bill. Therefore, on the complaint lodged by the Tahsildar, a criminal case was

registered against the petitioner herein. As per the report of the JNTU, the building is in dilapidated condition and, therefore, respondent No.3 had issued the impugned notice instructing the petitioner to vacate the subject plot so as to demolish the building immediately. Thus, there is no irregularity or illegality in issuing the impugned notice.

iv) With the aforesaid submissions, the learned Standing Counsel sought to dismiss the present writ petition.

6. CONTENTIONS OF RESPONDENT No.4:

i) Referring to the contents of the counter affidavit filed on behalf of respondent No.4, Mr. C. Naresh Reddy, learned counsel, would contend that respondent No.4 had purchased the subject plot under a registered sale deed bearing document No.2748 of 2017, dated 05.05.2016 from Smt.M. Pushpalatha. The petitioner is claiming right over the subject land based on the fictitious documents. During the life time of the mother of the petitioner, she gave a complaint against the petitioner herein on 25.01.1999. There are criminal cases pending against the petitioner for her illegal acts to grab the subject plot. Respondent No.4 had filed a suit vide O.S. No.98 of 2018 seeking eviction of the petitioner, arrears of rent and damages and the said suit is pending.

ii) The learned counsel would further contend that since the building is in dilapidated condition, respondent No.4 had lodged a complaint with respondent No.3 to take action in accordance with law, and accordingly, respondent No.3 had obtained report from the JNTU and on the basis of the same, respondent No.3 had issued the impugned notice instructing the petitioner to vacate the subject plot so as to demolish the subject land. Thus, there is no error in it. The petitioner instead of vacating the subject plot to demolish the structures approached this Court. Therefore, she is not entitled to seek any relief from this Court.

iii) With the aforesaid submissions, the learned counsel sought to dismiss the present writ petition.

7. It is relevant to note that the petitioner has filed I.A. No.3 of 2021 to amend the prayer in the writ petition for the purpose mentioned above. She also filed I.A. No.4 of 2021 to pass orders to punish respondent Nos.2 to 4 for lying and committing perjury before this Court in the present writ petition on the ground that they have filed sworn affidavits with all lies and misleading this Court. The contents of the sworn affidavits filed by respondent Nos.3 and 4 are contrary to record and their own proceedings. With the said contentions, the petitioner filed the perjury petition.

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 date 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.