
(2008) 02 AP CK 0064

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6745 of 2004

M. Rama Rao

APPELLANT

Vs

Commissioner, Serilingampally Municipality and Others

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 2(3), 228, 6

Citation : (2008) 3 ALD 344 : (2008) 3 ALT 659

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : V. Rajagopal Reddy, for the Appellant; Kalpana Ekbote, SC for Greater Hyderabad Municipal Corporation for Respondent No. 1 and D. Madhava Rao, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Alleging that he purchased 532 Sq.yards in S. No. 32 of Guttala Begumpet Village from its owner Smt. N. Sri Lakshmi Kusuma and constructed a compound wall and other structures therein, and that respondents 2 and 3 with the members of the staff of Hyderabad Urban Development Authority and Town Planning Department, had on 24.2.2004 high-handedly and without giving any notice demolished the compound wall and the structures and thereby caused monetary loss to him, petitioner filed this petition seeking a direction to the respondents to restore the compound wall and the structures therein.

2. In the counter-affidavit filed by the first respondent he alleged that the petitioner had unauthorisedly constructed the compound wall and a room without obtaining prior permission in an area where there is no approved layout and so when 2nd respondent requested his assistance for removal of the illegal and unauthorized constructions being made by the petitioner he assisted in the removal of the unauthorized constructions.

3. No counter-affidavit is filed by and on behalf of respondents 2 and 4.

4. In the counter-affidavit filed by the 3rd respondent it is stated that as she received a communication from the Hyderabad Urban Development Authority and Cyberabad Urban Development Authority, and as the 2nd respondent instructed her to co-ordinate with him, she extended her co-operation in discharge of the duties of the officials of the Hyderabad Urban Development Authority and Cyberabad Urban Development Authority and as she did not commit illegality, petitioner is not entitled to any relief from her.

5. First respondent is "The Commissioner, Serilingampally Municipality". Respondents 2 and 3 are named individuals by indicating their official designation. Fourth respondent is the Mandal Revenue Officer, Serilingampally. As per Section 6 of the A.P. Municipalities Act it is the Municipal Council that has to sue and be sued. As the Municipal Council, Serilingampally, is not sued it is clear that the writ petition is not against Serilingampalli Municipality but is against the Commissioner of Serilingampalli Municipality only. Inasmuch as the Commissioner does not act independently but acts for and on behalf of Municipality, and as Serilingampally municipality is not made a party to the petition, and as the Commissioner of that municipality only is made a party to the petition, no relief can be granted to the petitioner against the Serilingampally Municipality.

6. Technicalities apart, the counter-affidavits filed by 1st respondent and 3rd respondent show that they were acting on the instructions of the 2nd respondent, who is a named individual.

7. The contention of the learned Counsel for the petitioner is that inasmuch as the Municipality cannot, in view of Section 228 of the Act, demolish even the unauthorized structures without issuing notice, and as there is nothing on record to show that any notice directing demolition of the structure constructed by the petitioner was given, petitioner may be granted the relief sought, and relied on Machilipatnam Municipality represented by its Commissioner v. Inampudi Lakshmikanthamma and Anr. 1995 (3) ALD 163 and Lakshmi Construction and Others Vs. Government of A.P. and Others, , in support of his said contention.

8. The contention of the learned Standing Counsel for the Greater Hyderabad Municipal Corporation, in which the Serilingampally Municipality was merged in the recent past, is that at the request of the 2nd respondent for assistance in demolition of unauthorized constructions, 1st respondent extended his co-operation to the 2nd respondent, and so petitioner is not entitled to any relief against the 1st respondent. Counsel for 3rd respondent stated that 3rd respondent at the instance of the 2nd respondent in her official capacity extended her co-operation to the 2nd respondent in demolishing the unauthorized structures and so 3rd respondent cannot be made liable in her individual capacity. There is no representation on behalf of respondents 2 and 4.

9. The specific case of the petitioner is that no notice whatsoever was given to

him before the respondents thought it fit to demolish the structures raised by him. Though as per Section 2(3) of the Act compound wall, not exceeding two meters in height, is not a "building" within the meaning of the Act, as the height of the compound wall constructed by the petitioner is not known, and as it is not even the case of respondents 1 and 3 who filed their counter-affidavits that notice as contemplated by the Act was given to the petitioner before demolishing the structures raised by the petitioner, and as demolition of structures constructed by the petitioner is not denied or disputed, it has to be taken that the structures raised by the petitioner were demolished without issuing any notice, which cannot but be said to be a high handed act. When the 2nd respondent or any of the respondents want to demolish the structures raised by the petitioner on any ground they should follow the procedure prescribed by the Act and give notice and follow the procedure prescribed by the Act.

10. Nothing is placed on record by any of the respondents to show that procedure contemplated by the Act was followed or show-cause notice was issued to the petitioner before demolishing the structures raised by the petitioner. Irrespective of the fact whether structures raised by the petitioner were legal or illegal, respondents demolishing the structures raised by the petitioner without issuing notice and without following the procedure prescribed by the Act cannot but be said to be a high handed and illegal act. Merely because authorities constituted under the Act are vested with power to do some acts, they cannot, without following the procedure prescribed by the enactment to perform that act, resort to exercise that power at their whims and fancies. Such whimsical exercise of power is to be deprecated.

11. As it is the contention of the respondents that there is no approved layout for the place in which the petitioner raised the structures and as the petitioner did not produce any document to show that he has an approved layout or obtained permission for raising the constructions, which were demolished, instead of directing reconstruction of the demolished structures I direct the 1st respondent to pay Rs. 15,000/- (Rupees fifteen thousand only) as damages to the petitioner which can be recovered by the 1st respondent from the 2nd respondent. 2nd respondent is being made liable because the counter-affidavits of respondents 1 and 3 show that they acted only as per the directions of the 2nd respondent, and as 2nd respondent failed to show as to how he could order demolition of the structures without following the procedure prescribed by law.

12. So, the writ petition is allowed with costs directing the 1st respondent to pay Rs. 15,000/- as compensation to the petitioner within a period of one month from today, which shall be recovered by the 1st respondent from the 2nd respondent.