
(2006) 07 AP CK 0046
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8418 of 1999

M. Satyanarayana

APPELLANT

Vs

Bhimavaram Municipal Council and Another

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 228, 228(1), 228(2), 44B

Citation : (2006) 6 ALD 94 : (2006) 6 ALT 117

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : A.V. Sessa Sai, for the Appellant; S. Nageswara Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Goda Raghuram, J.—The 2nd respondent by the impugned proceedings dated 1.4.1999 having rejected the explanation dated 20.2.1999 submitted by the petitioner to the provisional notice dated 17.2.1999, directed the petitioner to remove all the unauthorized constructions/extensions made in the petitioner's site within the stipulated time failing which, the order directs, the unauthorized constructions would be demolished departmentally and the costs therefore recovered from the petitioner. The writ petition assails this order.

2. The petitioner is the owner of 226 1/2 S.Yds, of land in RS No. 489/3, Ward-30, Katarinagar, Bhimavaram Municipality. According to the petitioner, when the respondent-Municipality issued a notice directing removal of the compound wall in the site, the petitioner instituted OS No. 121/91 before the I Addl. District Munsif, Bhimavaram, against the Municipality for a permanent injunction restraining demolishing of the southern side compound wall and in any way interfering with the petitioner's possession and enjoyment of the site and the house therein. An interim injunction was granted. The suit was however dismissed on 31.10.1996. The petitioner preferred AS No. 3/97 against the said dismissal. The petitioner admits at the hearing of the writ petition that the appe

al has also since been dismissed. During the pendency of appeal however the Municipality issued a provisional notice dated 17.2.1999 under Section. 228(1) and (2) of the A.P. Municipalities Act 1965 ("the Act") stating that the petitioner had commenced construction in the property without permission from the municipality and that he is directed to stop the construction forthwith, to remove the constructions already made without permission and to obtain permission as per the building rules. The petitioner was asked to show cause why the proposals in the notice be not confirmed. To this notice the petitioner submitted his explanation on 20.2.99. He merely stated therein that the suit filed by him OS No. 121/92 was dismissed on 31.3.96, that aggrieved thereby he preferred AS No. 3/97 and since the appeal is pending adjudication no removal or demolition of the constructions could be made as the matter is sub judice. It requires to be noticed that the petitioner did not dispute the assertions in the notice dated 17.2.1999 that the constructions in the site were without permission of the Municipality and in contravention of the provisions of the Act.

3. The respondent-Municipality then issued the impugned order. The order states that the petitioner had constructed the building unauthorisedly without any permission from the Municipality and that earlier when a notice dated 26.2.91 was issued under Section. 228(1) and (2) of the Act, the petitioner had filed OS No. 121/92, which was however dismissed. Instead of complying with the provisional notice dated 26.2.1991 the petitioner continued the unauthorized constructions. The respondent further stated in the impugned order that the mere pendency of AS No. 3/97 would not inhibit the power of the municipality to demolish the unauthorized constructions; that the constructions were not only unauthorized and in violation of the Act, but also in violation of the A.P. Town Planning Act as the constructions fall partly in the open space ear marked for a public purpose in the master plan and partly in the 30 ft, wide master plan road and therefore the petitioner is liable for action under Section. 44B of the Act.

4. In the writ petition the petitioner pleads that the municipality has no power under Section.228 to demolish the constructions; that as the provisional notice was questioned before the civil court, the municipality is not entitled to pass a final order even though the suit (filed by the petitioner) was dismissed as the appeal filed by him As No. 3/97 is pending. The petitioner also pleads that the constructions made by him are not harmful to the public nor are there any complaints to that effect.

By an order dated 19.4.99 this Court granted interim stay of demolition of the constructions in the land in question pursuant to the impugned notice dated 1.4.99.

5. The current position is that not only AS No. 3/97 was dismissed but also a second appeal preferred by the petitioner thereagainst. The petitioner thus lost throughout in the civil litigation. It is not the petitioner's case that the constructions were at all under any permission or sanction obtained from the respondent Municipality. The petitioner does not also dispute the assertion in the

impugned order that the constructions are partly encroaching into the open space earmarked for a public purpose and partly outs the 30 ft, wide master plan road. The petitioner also does not dispute the further assertion in the impugned order that he had proceeded with the unauthorized construction even after the earlier provisional notice issued on 26.2.1991.

6. It is thus clear that the petitioner without any manner of permission or sanction from the Bhimavaram Municipality constructed a building on the property and proceeded with the construction to its completion in gross defiance of the provisions of the Act. The only interim order granted to the petitioner and against the municipality in OS No. 121/92 was one restraining the municipality from interfering with the petitioner's constructions. The interim injunction did not either on its terms or any rational construction of it authorize the constructions by the petitioner. In accordance with the Act the petitioner was obliged to proceed with any construction only after obtaining permission/sanction from the concerned Municipality and on submitting an application and plan therefor. This requirement the petitioner failed to adhere to. After having lost all through in the civil litigation i.e., OS No. 121/92, AS No. 3/97 and the Second Appeal, the petitioner had no legitimate defence against the exercise of regulatory functions by the respondent-municipality. He nevertheless in abuse of the process of law has filed this writ petition and obtained on 19.4.99 an interim stay of demolition of the constructions in his property (pursuant to the impugned notice dated 1.4.99) thereby causing illegal obstruction to the exercise of lawful authority and obstruction to the execution of the provisions of the Act. This the petitioner did without any justification whatsoever. Sri A.V. Seshasai the learned Counsel for the petitioner has submitted that in view of the judgment of a Division Bench of this Court in Kukatpalli Municipality v. P. Satyanarayana 1990 (2) APLJ 201 the respondent-municipality is disentitled to demolish the unauthorized constructions in his plot. The Division Bench of this Court in the above judgment has merely recorded some observations that even if certain constructions are made unauthorisedly and without a valid sanction such would not automatically merit demolition of the constructions; that considerations of equity and public interest should be kept in view (by the municipality) in exercising the discretion whether to order demolition or not and that the discretion confided to a statutory authority should be exercised judiciously and reasonably. These observations were made in the factual context of that case where the respondent therein had commenced construction after obtaining a sanction from the Gram Panchayat in 1981 but had made constructions in deviation of the sanctioned plan. Also there was a report of the Commissioner which recorded that all the buildings in the street in question failed to comply with the requirement with regard to distance from the public road and a set off to be maintained according to the Zonal Developmental Regulations. The observation that every unauthorized construction may not merit demolition automatically is a broad statement of principle, the application of which must be judicially applied having regard to the factual context. Another decision to the

same effect, cited on behalf of the petitioner, is the judgment of a learned single Judge in *P. Hemalatha v. Rajahmundry Municipality* 1998 (1) APLJ 188.

7. In contrast to of the above observations of this Court are the principles spelt out by the Supreme Court in *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, : The Supreme Court pointed out that in numerous earlier decisions it had held that no consideration should be shown to a builder or any other person where construction is unauthorized. The Supreme Court Stated:

This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."(para 73)

8. The Apex Court also observed that a number of cases were coming up to that court illustrating the increase in the unauthorized constructions at many places in the country by builders in connivance with Corporations/Municipal officials. The court pointed out that in a series of cases the court had directed demolition of unauthorized constructions but even such directions do not appear to have had any salutary effect. The court observed that while directing demolition of unauthorized constructions the court should also direct an inquiry as to how the unauthorized construction came about and to bring the offenders to book and that it is not enough to direct demolition of unauthorized structures, where there is a clear defiance of the law (Para 81).

9. In *Friends Colony Development Committee Vs. State of Orissa and Others*, : Lalhoti CJ, speaking for the Bench pointed out that building regulations though constitute regulation of the freedom of individual property owners, are not arbitrary or unreasonable. Private interest stands subordinated to the public good. The power to plan development of the city and to regulate the building activity therein flows from the police power of the State and the exercise of such governmental power is justified on account of it being reasonably necessary for public health, safety, moral or general welfare and ecological considerations. The Apex Court also pointed out that though the Municipal laws permit deviation from sanctioned construction being regularized by compounding but that is by way of exception. The exception, with lapse of time and too frequent an exercise of discretionary power had become the rule. Frowning on this phenomenon, the court held that only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations where the benefit gained by demolition would be far less than the disadvantage suffered.

However, held the Supreme Court, deliberate deviations do not deserve to be condoned and compounded and compounding of deviations wherever justification exists ought to be kept at a bare minimum.

10. In view of the clear principle and the guidelines spelt out by the Supreme Court contouring the discretion to be exercised in cases involving unauthorized or deviant constructions and applying these binding principles to the facts in this case, the conclusion is compelling and irresistible that the conduct of the petitioner in commencing and completing constructions in his property without sanction or permission from the Bhimavaram Municipality constitutes conduct deleterious to the public interest and in utter defiance of the law. Such conduct, if condoned, would undermine the rule of law and the interest of an orderly society. The petitioner's conduct is inexcusable and constitutes a gross abuse of the process of law. In the considered view of this Court there are no equitable considerations or countervailing equities in favour of the petitioner which warrant interdiction of the demolition of his property by the respondent-municipality in execution of the legislative mandate - the A.P. Municipalities Act 1965.

11. In view of the persistent obstruction caused by the petitioner to public interest, maintenance of Civil responsibility and effectuation of the legislative mandate including by instituting this wholly unfounded litigation and obtaining an interim order restraining the respondent-Municipality from the due performance of its statutory obligation and without any justification for doing so, this Court considers it appropriate and obligatory to award exemplary costs of Rs. 50,000/- (Rupees Fifty Thousand only) of which Rs. 25,000/- shall be paid to the Bhimavaram Municipality and Rs. 25,000/- to the Secretary, AP State Legal Services Authority, High Court buildings, Hyderabad, within eight weeks from the date of receipt of a copy of this order.

12. For all the aforesaid reasons and in view of the aforesaid analysis, the writ petition is dismissed and the respondent-Municipality is directed to take appropriate action against all the unauthorized constructions made by the petitioner in his property in accordance with the proceedings bearing Roc. No. U.C. No. 2/99/Division.III, dated 1.4.1999 and the provisions of the Andhra Pradesh Municipalities Act, 1956.