

---

**(2022) 10 TEL CK 0051**  
**In the Telangana High Court**  
**Case No : Writ Appeal No. 563 Of 2022**

M/S. Arunachala Logistics Pvt. Ltd.

APPELLANT

Vs

State Of Telangana And 8 Others

RESPONDENT

---

**Date of Decision :** 18-10-2022

**Acts Referred:**

Greater Hyderabad Municipal Corporation Act, 1955 — Section 428, 429, 429(1)(aa), 438

**Citation :** (2022) 10 TEL CK 0051

**Hon'ble Judges :** Ujjal Bhuyan, CJ; C.V. Bhaskar Reddy, J

**Bench :** Division Bench

**Advocate :** Vedula Chitralkha

**Final Decision :** Allowed

---

## Judgement

1. This appeal is preferred aggrieved by the order passed in W.P.No.15026 of 2021 dated 29.07.2022 of the learned Single Judge in dismissing the writ petition.

2. The appellant is the writ petitioner. The writ petition has been filed to issue a Writ of Mandamus declaring the order bearing Lr.No.1/C20/ 22171/2018/234, E-office No.226495, dated 13.03.2021, issued by respondent Nos.2 and 3 as unjust, arbitrary and untenable and consequently prayed to set aside the same.

3. The case of the writ petitioner (company) is that it purchased agricultural land admeasuring Ac.1-10.6 guntas in Survey No.169(part) and Ac.0-02.4 guntas of land in Survey Nos.165, 166 and 167 (part), totally admeasuring Ac.1.13 guntas in Survey Nos.165, 166 and 167 (part) and 169(part) of Kondapur Village, Serilingampally Mandal, Ranga Reddy District, vide registered sale deed dated 10.02.2016 Document No.1601/2016. Petitioner claims to be in possession of the subject land from the date of purchase. It is the further case of the petitioner that the land was converted from agricultural use to non-agricultural use by obtaining necessary permissions from the competent authorities and got the

schedule property demarcated and mutated in the revenue records and obtained feasibility certificate from HMWSSB dated 07.08.2018 and electricity connection in the year 2016.

4. Further case of petitioner is that after obtaining necessary clearances, it has made an application seeking building permission vide File No.1/C20/22171/2018 dated 11.03.2019 and also remitted an amount of Rs.1,66,53,310/- as per the demand made by respondent Nos.2 and 3 and also executed a registered mortgage deed to an extent of 10% of the total built up area as per rules vide registered Document No.19120/2019 dated 07.11.2019 in favour of respondent No.2 and also transferred an extent of 682.44 square yards to respondent No.2 for the proposed 120 feet road widening free of cost and accordingly respondent No.2 while accepting the same issued TDR (Transfer of Development Rights) Certificate to the writ petitioner on 06.07.2019. At this juncture, respondent Nos.4 to 9 filed an objection petition before respondent No.2 claiming ownership and title over the subject land to an extent of Acs.2.00 in Survey No.169(part) of Kondapur Village, Serilingampally Mandal, enclosing ad interim injunction order of Civil Court and requested respondent Nos.2 and 3 not to release the building permission. Acting on the said objections of respondent Nos.4 to 9, building permission was rejected vide orders dated 18.09.2020 intimating as follows:-

"(i) the decision with regard to Building Permission will be taken based on the outcome of O.S., which is pending.

(ii) both the parties are advised to approach Civil Court for redressal of dispute."

5. Questioning the aforesaid order, the petitioner has filed W.P.No.17287 of 2020 and this Court disposed of the same vide order dated 10.11.2020 setting aside the order dated 18.09.2020 of respondent No.2 and has directed to pass fresh orders within a period of four weeks.

6. The grievance as ventilated in the writ petition is that respondent No.2 conducted a roving enquiry with regard to title and entitlement of the respective parties and erroneously rejected the building permission vide impugned order dated 13.03.2021 by observing that the parties have to resolve their disputes in Civil Court and subject to the result of the suit, further action will be taken in respect to building permission. Questioning the said order, the writ petition has been filed.

7. A counter affidavit has been filed by respondent Nos.4 to 9 disputing possession and title of the writ petitioner. It is the case of respondent Nos.4 to 9 that they are the owners of land admeasuring Asc.02.00 out of Acs.06.00 in Survey No.169(part) situated at Kondapur Village, Serilingampally Mandal, having acquired the same through a registered sale deed dated 24.12.1997 vide Document No.6501 of 1998. It is stated that since disputes arose with respect to the said land, respondent Nos.4 to 9, through their GPA holder, has instituted O.S.No.367 of 2019 and O.S.No.112 of 2021 on the file of XV Additional District Judge, Ranga Reddy District. Further in the counter affidavit they traced title of

the land in Survey No.169 and the right of their vendors and their predecessors-in-interest for transferring the said land and conversion of land from agricultural use to non-agricultural purposes.

8. It is their further case that in O.S.No.367 of 2019 they obtained an order of ad interim injunction dated 26.09.2019 in I.A.No.1913 of 2019 in respect of Acs.2.00 of agricultural land in Survey No.169 and the writ petitioner filed I.A.No.2321 of 2019 in I.A.No.1913 of 2019 seeking to vacate the ad interim order and the same was dismissed by the Court below vide orders dated 21.01.2021. Aggrieved by the same, the petitioner filed C.M.A.No.121 of 2021 before this Court and this Court vide order dated 18.03.2021 allowed the C.M.A by setting aside the order dated 21.01.2021 passed in I.A.No.2321 of 2019 and remanded the matter for fresh disposal, while directing the parties to maintain status quo as on the date of the order till the disposal of I.A.No.2321 of 2019.

9. The learned Single Judge, after considering the rival submissions of the parties, observed that there are disputes between the petitioner and respondent Nos.4 to 9 for the land in Survey No.169(part) and held that the ad interim injunction granted by the Civil Court holds ground as on the date and upheld the power of Commissioner in rejecting building permission.

10. Sri Vedula Srinivas, learned Senior Counsel appearing for the appellant, would submit that the municipal authorities are not having any power to conduct a roving enquiry to determine title or ownership of the property and the limited function entrusted under Section 428 of the Act is only to consider the objections, to make a pragmatic assessment of the material available on record and to decide the question of prima facie title and lawful possession of the parties and beyond that the Commissioner is not entitled to decide any disputed questions of title or ownership and basing on the same, he cannot reject a building permission. Learned counsel further submits that the decision to grant building permission itself would not confer any title upon the applicant nor it would take away the rights of the parties making objections for ascertaining their title and interest in the land in respect of which permission has been granted and invariably, the disputes relating to title have to be decided by the competent Civil Court. Further he contended that as the appellant has prima facie satisfied the requirement of title, as such the Commissioner ought to have granted building permission and relegating the appellant to approach the Civil Court would cause great hardship, as the appellant has executed mortgage deed and also remitted the demanded amount towards development charges and the order of the Commissioner suffers from non-application of mind. It is his further contention that the injunction order passed in I.A.No.1913 of 2019 in O.S.No.367 of 2019 when not vacated, the appellant filed C.M.A.No.347 of 2021 and this Court in I.A.No.2 of 2021 in C.M.A.No.347 of 2021 has granted interim orders suspending the orders dated 03.08.2021 passed in I.A.No.1913 of 2019 in O.S.No.367 of 2019 and as such there are no restraining orders operating in respect of the subject property and respondent No.2 is obligated to consider the material for

prima facie satisfaction to grant building permission and since the Commissioner failed to discharge his duties, the learned Single Judge ought to have interdicted the orders of the Commissioner and allowed the writ petition. He also submits that the learned Single Judge, without taking into consideration the orders granted by this Court suspending the order in I.A.No.1913 of 2019 in O.S.No.367 of 2019, has dismissed the writ petition which warrants interference of this Court, as appeal amounts to continuation of the original proceedings. In support of his contentions, learned counsel also placed reliance on the judgment of this Court *Mir Asad Sayeed Khan Asad Khan vs. The State of Telangana* MANU/TL/0208/2021.

11. Per contra, Mr. R. Rakesh, learned counsel appearing for respondent Nos.4 to 9, submits that the learned Single Judge, after taking note of the inter se disputes pending among the parties and the extent of the land purchased by the writ petitioner as forming part of Survey No.169, in respect of which O.S.Nos.367 of 2019 and 112 of 2021 are pending for adjudication, rightly observed that unless the same are decided on merits, the dispute cannot attain finality. He strongly supported the reasoning given by the learned Single Judge and prayed for dismissal of the writ appeal.

12. Before we advert to the facts of the case, it is necessary to examine the scope and ambit of power of the Commissioner, Municipal Corporation under Sections 428 and 429 of the Act, in particular, his power to examine title of the applicants for granting building permission.

13. A perusal of the order passed by the Commissioner reveals that the Commissioner has taken note of the various cases pending among the parties and entered upon the discussion of title and possession relating to land and rights of the inter se parties, instead of confining to satisfy himself of the prima facie title has traversed the issues which do not fall within the purview of the powers of Commissioner and relegated the parties to approach the Civil Court.

14. We have carefully examined the provisions of the GHMC Act which enable the Commissioner to entertain building application. Under Section 428 of the Act, every person intending to erect a building has to give notice to the Commissioner expressing intention to erect building; Section 429 of the Act enumerates the documents which are necessary to be furnished along with the building application; and Section 429(1)(aa) of the Act presupposes enclosure of title deed of the land duly attested by a Gazetted Officer as well as urban land ceiling clearance certificate; and Section 438 of the Act requires the Commissioner to record reasons to disapprove any building or work. While considering the application for building permission, the Commissioner is required to adhere to the building bye-laws. A conjoint reading of the provisions would show that there is no specific provision or provisions which enable the Commissioner to reject an application for building permission on the ground that the ownership of the person applying for building permission is in dispute. It would further reveal that the Commissioner is not empowered to entertain a title dispute and adjudicate

the same before disposing of the application for grant of building permission. If any objection regarding title is received by the Commissioner, the same is required to be examined for forming a prima facie opinion with regard to title and lawful possession and prima facie opinion never being a material factor for grant of building permission. A person setting up a rival claim of title is entitled to resolve the disputes before the competent Court.

15. In the instant case, admittedly, the Commissioner having satisfied with the prima facie title and possession of the appellant has granted tentative approval in File No.1/C20/22171/2018 dated 17.01.2019 and directed the appellant to remit a sum of Rs.1,66,53,310/- and the same was paid on 16.11.2019. Further, revenue and irrigation authorities had granted permission for converting the land from agricultural use to non-agricultural purposes and the electricity connection also stands in the name of the appellant. These documents, in our view, satisfy the prima facie requirement for granting building permission subject to title disputes being resolved by the competent Courts.

16. Further, much emphasis has been placed on the pendency of the suits instituted by respondent Nos.4 to 9 i.e., O.S.No.367 of 2019 and O.S.No.112 of 2021 and the ad interim injunction granted in I.A.No.1913 of 2019 dated 26.09.2019. In fact, initially the Court below has granted ad interim injunction restraining the defendants therein from interfering with the possession of the land to an extent of Acs.2.00 in Survey No.169(part) of Kondapur Village, Serilingampally Mandal, Ranga Reddy District. The appellant filed I.A.No.2321 of 2019 in I.A.No.1913 of 2019 in O.S.No.367 of 2019 seeking vacation of the order of ad interim injunction and the same was dismissed on 12.07.2021. Aggrieved thereby, the appellant filed C.M.A.No.121 of 2021 before this Court and this Court modified the said order to that of status quo order and remanded the matter for fresh disposal. On remand, the Court below dismissed the vacate application in I.A.No.2321 of 2019 on 21.01.2021. Questioning the dismissal order passed in I.A.No.1913 of 2019, the appellant filed two C.M.As vide C.M.A.No.342 of 2021 and 347 of 2021. A Division Bench of this Court, after considering the entire gist of the case, has granted interim order in I.A.No.2 of 2021 in C.M.A.No.342 of 2021 suspending operation of the orders passed in I.A.No.1913 of 2019 vide order dated 12.08.2021. Similarly, the interim injunction granted in favour of respondent Nos.4 to 9 was also suspended in I.A.No.2 of 2021 in C.M.A.No.347 of 2021.

17. A reading of the above orders would disclose that injunction orders granted in favour of respondent Nos.4 to 9 in I.A.No.1913 of 2019 in O.S.No.367 of 2019 dated 26.09.2019 are suspended and the same are not in operation. No doubt, when there are restraining orders issued by the competent Courts from entertaining building applications, or granting building permission, they have to be obeyed strictly, unless the order of injunction is vacated/set aside by the competent Court of jurisdiction. But mere pendency of the suits cannot ipso facto act as a prohibition on the statutory powers exercised by the Commissioner

under the provisions of the Act. Significantly, as on date there is no direction in the suits restraining the statutory authority either from entertaining building application or from grant of building permission or preventing the authority to examine the said applications strictly in accordance with Sections 428 and 438 of the Act.

18. In *Mir Asad Sayeed Khan Asad Khan* (1 supra) this Court while examining the scope and ambit of the powers of the Commissioner of the Municipal Corporation under Sections 428 and 429, after referring to various judgments, held as follows:-

“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.”

19. For the aforementioned reasons, we allow the writ appeal and set aside the order passed by respondent No.2 in Lr.No.1/C20/ 22171/2018/234, E-office No.226495, dated 13.03.2021 with a direction to consider the application of the appellant for grant of building permission afresh within a period of four weeks from the date of receipt of a copy of this order. It is clarified that the observations made for the purpose of disposal of the writ appeal shall not have any bearing on the merits of the civil suits pending adjudication before the concerned courts.

Miscellaneous applications, pending if any, shall stand closed. There shall be no order as to costs.