
(2021) 08 TEL CK 0057
In the Telangana High Court
Case No : Writ Appeal No. 162 Of 2021

M/S. Fortuna Infrastructure India Pvt. Ltd	APPELLANT
Vs	
State Of Telangana	RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 21 Rule 97
Greater Hyderabad Municipal Corporation Act, 1955 — Section 450

Citation : (2021) 08 TEL CK 0057

Hon'ble Judges : M.S.Ramachandra Rao, J;T. Vinod Kumar, J

Bench : Division Bench

Advocate : Vedula Chitralkha

Final Decision : Allowed

Judgement

1. This Appeal is preferred against the order dt.08.03.2021 in W.P.No.28185 of 2019 passed by a learned single Judge of this Court.

2. The 1st respondent in this Appeal is the State of Telangana, represented by its Principal Secretary, Municipal Administration and Urban

Development Department, 2nd respondent is the Greater Hyderabad Municipal Corporation, represented by its Commissioner, respondent Nos.3 to 5

are the employees of the said Corporation, 6th respondent is the Deputy Director of Survey and Land Records, Hyderabad, and 7th respondent is a

private party.

The Municipal permission dt.14.12.2018 granted to respondent No.7

3. A building permission dt.14.12.2018 was issued by the Greater Hyderabad Municipal Corporation (GHMC) (2nd respondent) in favour of 7th

respondent in respect of land in Sy.No.227 (old) corresponding to T.S.No.20/1/A, 20/2 and 20/3, Block No.F in Ward No.87 situated at Somjiguda,

Hyderabad.

The applications dt.19.1.2019 and 13.3.2019 of appellant to revoke the said permission invoking Sec.450 of the GHMC Act, 1955

4. The appellant filed applications on 19.01.2019 and 13.03.2019 before the 2nd respondent contending that the said building permission was obtained

by 7th respondent by playing fraud and misrepresentation and it was liable to be revoked in exercise of the powers conferred on the Commissioner

under Section 450 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act").

5. The appellant contended that it is the absolute owner and possessor of land admeasuring 19013 sq. yds equivalent to Ac.3.39 gts out of Ac.14.39

gts in old Sy.No.227 equivalent to new Sy.T.S.No.20/1/A, 20/2 and 20/3, Ward No.87, Block-F situated at Somajiguda, Hyderabad by virtue of a sale

deed dt.17.11.2007 being Doc.No.2473 of 2007 executed by the IV Additional Senior Civil Judge, City Civil Court, Hyderabad on behalf of Nawab

Mohammed Mazharuddin Khan and others pursuant to a decree dt.27.11.1996 in O.S.No.1402 of 1996 by the IV Additional Judge, City Civil Court,

Hyderabad in E.P.No.155 of 2002 therein.

6. Appellant pointed out that M/s.Pradeep Constructions represented by 7th respondent filed a Claim Petition E.A.No.81 of 2008 in the said E.P.

invoking Order XXI Rule 97 C.P.C. and that the same is pending, but suppressing the same, the 7th respondent applied for permission and obtained it

on 14.12.2018.

The order dt.4.12.2019 of the Commissioner of the GHMC (2nd respondent) rejecting appellant's applications under Sec.450 of

the Act

7. The Commissioner of the 2nd respondent Corporation passed an order in proceedings No.1/C17/13164/2018 HO dt.04.12.2019 rejecting the request

of the appellant to revoke the permission granted to the 7th respondent for building permission on 14.12.2018.

8. In the said order, it is stated in para-16 that on receipt of pleadings from the parties, matter was referred to the Legal Adviser of 2nd respondent for

his opinion; that the Legal Adviser, through his opinion dt.02.07.2019, had opined that 7th respondent was entitled for consideration of the building

permission and objection petitions are liable to be rejected, and that the 2nd

respondent Corporation need not cancel the building permission already granted to the 7th respondent. It is also observed that grant of building permission had been recommended earlier by the Deputy Director, Survey and Land Records (6th respondent)/AC (Estates) of 2nd respondent and legal opinion offered by the Legal Adviser of 2nd respondent to the effect that 7th respondent had established title.

9. The Commissioner of 2nd respondent stated that earlier the appellant had filed W.P.No.6173 of 2019 for a direction to him to dispose of the applications filed for cancellation of building permissions under Section 450 of the Act, that the High Court had directed disposal of the said applications, but the High Court had not specified that the said building permission already granted needs to be revoked.

10. Then a reference is made by the Commissioner of 2nd respondent to another suit O.S.No.701 of 2019 filed by one Mir Dawar Baquri before the

IV Junior Civil Judge against 7th respondent and the 2nd respondent (to which the appellant is not a party); and after noting that E.A.No.81 of 2007 is

pending in E.P.No.37 of 2008 in O.S.No.1402 of 1996, a finding is also recorded that the property covered by the decree in O.S.No.1402 of 1996 is

different from the property to which building permission is granted to the 7th respondent.

11. He then stated that from 1929 onwards, on the basis of various registered documents, the 7th respondent has prima facie title, that the dispute

between the appellant and 7th respondent is pending in the Courts and not settled in favor of the appellant, and the 2nd respondent is not restrained

from considering the building permission nor was it directed to cancel the building permission.

W.P.No.28185 of 2019

12. This order was questioned by the appellant in W.P.No.28185 of 2019.

The order dt.8.3.2021 in WP.No.28185 of 2020

13. The learned Single Judge held that Commissioner of 2nd respondent cannot go into the issues of title, that he had elaborately dealt with the

objections of the appellant and found that appellant has raised serious disputed questions of title and facts which cannot be gone into by the

Commissioner, and has relegated the parties to the Civil Court.

14. He therefore upheld the order dt.04.12.2019 passed by the Commissioner of 2nd respondent and refused to stay the building permission granted to the 7th respondent.

15. He also observed that the appellant was not in possession of the property in question, and since the appellant alleges that 7th respondent had encroached his property, the appellant is permitted to approach the competent Civil Court but not in the High Court.

16. He observed that in E.P.No.37 of 2008 filed by the appellant, which is pending before the Executing Court for adjudication, identity of the property, rival claim of 7th respondent and the entitlement of appellant to be in possession, have to be gone into; and when the matter is pending before the Civil Court for adjudication, the High Court is not inclined to deal with them.

17. The learned Single Judge then observed that any constructions made by 7th respondent in the subject property shall be subject to the orders of the Execution Court in E.P.No.37 of 2008 and directed the Executing Court to pass orders on its own merits irrespective of any observations made by the High Court.

The instant Writ Appeal

18. Assailing the same, this Appeal is filed.

19. Sri V.Srinivas, learned Senior Counsel appearing for Sri V.Chithralekha, learned counsel for petitioner contended firstly that the question which the learned Single Judge had to consider was whether there was any error in the order passed by the Commissioner of 2nd respondent Corporation in

exercise of the powers conferred on him under Section 450 of the Act; and under the said provision, the Commissioner of the 2nd respondent

Corporation is empowered to revoke any permission granted to proceed with any building or work, if there was material misrepresentation and

fraudulent statement made by the applicant for such permission; in the instant case, it is not the case of the 2nd respondent or 7th respondent that 7th

respondent had disclosed about its claim petition E.A.No.81 of 2008 in E.P.No.37 of 2008 in O.S.No.1402 of 1996 on the file of the V Senior Civil

Judge, City Civil Court, Hyderabad; and this aspect of suppression of facts had to be gone into by the Commissioner while considering appellant's

applications under Section 450 of the Act to revoke the permission granted to the 7th respondent, but he did not dealt with this aspect of suppression of

fact by 7th respondent at all.

20. He next contended that the Commissioner of the 2nd respondent had stated in para-16 that after receipt of pleadings of parties, he had referred

the matter to the Legal Adviser of the of 2nd respondent for his opinion, that the Legal Adviser gave opinion on 02.07.2019 in favour of 7th

respondent, and placing reliance on the legal opinion, the impugned order had been passed.

Learned counsel for appellant contended that the Commissioner of 2nd respondent cannot outsource his quasi judicial function to the Legal Adviser of

2nd respondent, and such consultation and taking of legal opinion before passing the impugned order and relying on it vitiates the order dt.04.12.2019

passed by the Commissioner of the 2nd respondent.

21. He also stated that in the impugned order passed by the Commissioner there is reference to the suit in O.S.No.701 of 2019 filed by Mir Dawar

Baquri, but appellant has nothing to do with the said suit, and this irrelevant consideration is also the basis for the order passed by the Commissioner on

04.12.2019.

22. He further contended that the Commissioner of 2nd respondent cannot refuse to exercise jurisdiction conferred on him under Section 450 of the

Act on the ground that the High Court in W.P.No.6173 of 2019 did not specify that building permission already granted to the 7th respondent needs to

be revoked and that unless such direction is given by the High Court, he cannot exercise power under Section 450 of the Act.

23. Sri N.Ashok Kumar, learned Standing Counsel appearing for respondent Nos.2 to 5 sought to contend that there is nothing wrong if the

Commissioner of the 2nd respondent Corporation takes legal opinion while exercising power under Section 450 of the Act. He contended that the

Legal Adviser of the 2nd respondent Corporation, in his opinion dt.02.07.2019, had rightly stated that the building permission granted to the 7th

respondent need not be cancelled in view of the prima facie title, and the appellant's application for revocation of such permission granted to 7th

respondent should be rejected. He pointed out that in para-6 of the counter-affidavit filed in W.P.No.28185 of 2019, the 3rd respondent (who filed

counter on behalf of respondent Nos.2 to 5) stated that in view of legal opinion tendered, the building permission already granted to the 7th respondent

is not revoked. He asserted that disputed questions of title cannot be gone into by the Commissioner of 2nd respondent.

24. Sri V.Ravinder Rao, learned Senior Counsel appearing for Sri M.Vishnuvardhan Reddy, learned counsel for 7th respondent also supported the order passed by the Commissioner of 2nd respondent on 4.12.2019 and the order passed by the learned Single Judge. He sought to contend that the Commissioner did not rely upon the legal opinion dt.02.07.2019 of the Legal Adviser of the of 2nd respondent, and he independently considered the matter.

The consideration by the Court

25. We have noted the submissions of the parties.

26. Section 450 of the Act states:

“450. If at any time after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under section 428 or 433 or in the further information if any, furnished, he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.”

27. Under this provision, the Commissioner of GHMC has power to cancel any permission obtained for making building construction, if he is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement by the applicant for building permission.

28. No material is placed before this Court by the 7th respondent that he had disclosed to the Commissioner of GHMC about the litigation pending between it and the appellant i.e. E.A.No.81 of 2008 in E.P.No.37 of 2008 in O.S.No.1402 of 1996 before the V Senior Civil Judge, City Civil Court, Hyderabad or that appellant had obtained registered sale deed dt.17.11.2007 from the said Court through decree dt.27.11.1996 in O.S.No.1402 of 1996.

29. Had such information been disclosed, it is possible that the Commissioner might have rejected the application made for grant of Municipal permission to 7th respondent as there would be a serious doubt as to whether he

had prima facie title to the subject property or not.

30. The learned Single Judge in the impugned order has not gone into the aspect as to whether there is disclosure by 7th respondent of the above facts

before the permission for building permission was obtained by the 7th respondent on 14.12.2018, and whether it would have affected the decision of the Commissioner to grant or withhold permission to him.

31. In *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1, at page 5, the Supreme Court held:

“A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage.”

32. We have no hesitation to hold that the suppression by 7th respondent of the decree in O. S.No.1402 of 1996 in favor of the appellant and pendency of the claim petition EA.No.81 of 2007 filed by him therein was a deliberate act of deception intended to gain unfair advantage over the appellant.

33. In our opinion, the learned Single Judge ought to have considered the matter in this perspective and his omission to do so has vitiated his order.

34. Another important question which seems to have missed the attention of the learned Single Judge was the conduct of the Commissioner of 2nd respondent in referring the dispute to be decided by him under Section 450 of the Act to the Legal Adviser of 2nd respondent for his opinion, obtaining such legal opinion on 02.07.2019 and then rejecting the appellant’s applications for revocation of permission granted to the 7th respondent on the basis of such legal opinion. The 3rd respondent had categorically stated in para-6 of the counter-affidavit filed by him on behalf of respondent Nos.2 to

5 as under:

“6. On the receipt of the complaints and as the building permission was already issued by the time the objection petitions were filed

the matter has been referred to the legal advisor GHMC. The legal advisor, GHMC in his opinion dt.02.07.2019 has offered his considered

opinion that building permission already granted to the applicant need not be cancelled as the applicant is entitled for consideration of his

building permission in view of the prima facie title and the complaint petitions are liable to be rejected. The legal advisor, GHMC has also

offered his consideration that the revised building application for building permission of the applicant can be considered after obtaining an

undertaking/affidavit from the applicant to the effect that he would not claim equities and he would obey and would be bound by the

outcome of the final orders of the Courts. In view of the legal opinion tendered, the building permission already granted is not

revoked. (emphasis supplied)

Thus it is clearly admitted that the said legal opinion dt.02.07.2019 of the Legal Adviser of the 2nd respondent was relied upon by the Commissioner to

come to the conclusion that the building permission already granted cannot be revoked.

The Supreme Court in Sri Jagannatha Temple Managing Committee Vs. Siddha Math and others (2015) 16 SCC 542 held that a quasi judicial function

cannot be delegated.

Outsourcing of the essential adjudicating function, like a quasi judicial function by the Commissioner of the 2nd respondent Corporation to the legal

advisor of the Corporation, clearly vitiates the impugned order passed by him on 04.12.2019.

The failure of the learned Single Judge to take note of this aspect has also vitiated his order.

35. Merely because the appellant had filed W.P.No.6173 of 2019 for a direction to the 2nd respondent to dispose of his applications under Section 450

of the Act for revoking the building permission granted to the 7th respondent, and the High Court directed the Commissioner to dispose of the same,

the Commissioner cannot say that the High Court did not specify that the permission already granted needs to be revoked or that the

GHMC is not restrained considering the building application nor GHMC is directed to cancel the building permission.

The Commissioner cannot, in our opinion, take a view that unless there is a direction from this Court to him to revoke the building permission, he

cannot revoke it even if there is suppression of material fact by 7th respondent for obtaining the building permission.

36. Likewise, reference made by the Commissioner in the impugned order dt.04.12.2019 to the suit O.S.No.701 of 2019 said to have been filed by Mir

Dewar Baquri before the IV Junior Civil Judge against 7th respondent's firm

has no relevance because the appellant is not a party to the said suit and such an irrelevant consideration cannot be the basis for exercise of jurisdiction under Section 450 of the Act.

37. While the principle that the Municipal Commissioner cannot go into the title disputes is well settled, the learned Single Judge ought to have seen

that the question before the Commissioner of 2nd respondent was not as to which party had better title, but whether there was any material

misrepresentation or fraudulent statement given by the 7th respondent for obtaining building permission from the 2nd respondent.

In our opinion, the learned Single Judge has mistakenly presumed that title to the property was being sought to be agitated by the appellant before the

Commissioner of the 2nd respondent, which was certainly not the case.

38. Also, in our view, the Commissioner of the 2nd respondent could not have expressed any opinion as to the location of the subject property claimed

by the appellant when it is the subject matter of E.A.No.81 of 2008 in EP.No.155 of 2002 in O.S.No.1402 of 1996, that too without there being any

material on record to enable him to express the said opinion. So the observations made by him in that regard are set aside.

39. In these circumstances, we are of the opinion that the order dt.8.3.2021 passed by the learned Single Judge upholding the order dt.04.12.2019

passed by Commissioner of the 2nd respondent cannot be sustained and both orders are liable to be set aside.

40. Accordingly, the Writ Appeal is allowed; the order dt.08.03.2021 in W.P.No.28185 of 2019 and the proceedings No.1/C17/13164/2018/HO

dt.04.12.2019 passed by the 2nd respondent are set side; the permission Permit No.1/c17/17963/2018 DT.14.12.2018 in File No.1/C17/13164/2018

granted by 2nd respondent to the 7th respondent is kept in abeyance till E.A.No.81 of 2008 in E.P.No.37 of 2008 in O.S.NO.1402 of 1996 before the

V Senior Civil Judge, City Civil Court, Hyderabad is decided; the said Court is directed to decide the E.A.No.81 of 2008 within three months after

hearing both sides.

41. It is made clear that the 7th respondent shall not make any further constructions or alienate any portion of the constructed area to any third parties

till the said E.A.No.81 of 2008 in E.P.No.37 of 2008 in O.S.NO.1402 of 1996 is decided by the V Senior Civil Judge, City Civil Court, Hyderabad

within the aforesaid period of 3 months. The 7th respondent shall pay costs of Rs.1,00,000/- (Rupees One Lakh only) to the appellant.

42. Consequently, miscellaneous petitions, pending if any, shall stand closed.