
(2007) 01 AP CK 0033
In the Andhra Pradesh High Court
Case No : AS No. 131 of 1991

Municipal Council	Vs	APPELLANT
Mohd. Iqbal Hussain		RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 228, 237, 238, 250, 258

Citation : (2007) 4 ALD 251

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Polisetti Krishna, for the Appellant; Samson Babu Advocate, for the Respondent

Judgement

P.S. Narayana, J.—The Municipal Council Karimnagar, the defendant in OS No. 5 of 1987 on the file of the Court of Second Additional District Judge, Karimnagar, aggrieved by the judgment and decree dated 29-6-1990 made thereunder preferred the present appeal.

2. Respondent, the plaintiff in the said suit filed the suit as against the appellant-defendant, the Municipal Council, Karimnagar, for recovery of damages to a tune of Rs. 1,50,000/- on the ground that the house was demolished illegally. The suit was originally instituted as OS No. 73 of 1983 on the file of the Court of Subordinate Judge, Karimnagar. The learned Judge on the respective pleadings of the parties, having settled the issues, recorded the evidence of PWs. 1 and 2, DWs. 1 and 3 and marked Exs. A1 to A14 and Exs. B1 to B26 and ultimately decreed the suit for Rs. 71,000/- with proportionate costs and subsequent interest from the date of decree @ 6% p.a., till the date of realization on the amount of Rs. 50,000/- and the rest of the suit claim was dismissed. As against the same, the present appeal is preferred.

3. Sri Polisetti Radhakrishna, the learned Standing Counsel representing the appellant as defendant had taken to this Court through the respective pleadings of the parties and the issues settled and the evidence available on record and the

findings recorded by the learned Judge and would comment that in the light of Section 258 of the A.P. Municipalities Act, 1965 (hereinafter referred to for short "the Act" for the purpose of convenience) the claim for compensation of damages as against the Municipal Council cannot be sustained. The learned Counsel also explained the historical background of the litigation and would maintain that the respondent as plaintiff claims to have purchased the property in the Court auction sale, which would not confer any title since in the Court auction sale there is no warranty of title. The Counsel also pointed out to the prior proceedings and the resolution in pursuance of the said decision removed the said structures, which had been taken, and inasmuch as the action taken by the appellant-defendant as Municipality is in accordance with law, the claim of damages by respondent as plaintiff cannot be sustained. While further elaborating submissions the Counsel would submit that even otherwise, if the value of the structures to be taken into consideration, the damages awarded definitely would be on higher side. The learned Counsel would also maintain that the learned Judge referred to the decision of this Court in *Kurmina Venkatrama Reddy v. Visakhapatnam Municipality*, represented by its Commissioner, Visakhapatnam, reported in 1978 (2) APLJ 247 and the learned Counsel pointed-out that the said decision is concerned with Section 228 of the Act and the ratio in the said decision is not applicable to the facts of the present case. Hence, the learned Counsel requested that the appeal to be allowed.

4. Sri Ch. Sambasiva Babu, the learned Counsel representing respondent-plaintiff, had taken this Court through the findings which had been recorded by the learned Judge and would submit that the plaint in fact was presented within time and at the relevant point of time, NGOs strike had been there and the same cannot be taken advantage of by the Counsel representing the appellant to contend that the suit is barred by limitation. The learned Counsel would also submit that there is a Court auction purchaser, who purchased the property and in the absence of any other evidence relating to the collusion with the alleged owners the contentions which are being advanced by the Counsel for the appellant-defendant cannot be sustained.

5. Heard the Counsel and perused the oral and documentary evidence available on record.

6. The parties hereinafter would be referred to as "plaintiff and defendant" as arrayed in OS No. 5 of 1987 as aforesaid for the purpose of convenience.

7. Averments made in the plaint: It was pleaded by the plaintiff, (the respondent in this appeal) in the plaint as hereunder:

The plaintiff is the owner and possessor of the house and premises Door No. 7-2-39/ A situated in Kashmergadda locality of Karimnagar Town. It was purchased by the plaintiff, in Court auction for a sum of Rs. 48,200/- being the highest bidder on 10-8-1979 in EP No. 31 of 1976 in OS No. 222/74. It was brought to sale by one Smt. T.R. Ratnamma against Smt. B. Laxminarsamma,

wife of Narayana for recovery of decree debt. The said sale was confirmed in favour of the plaintiff and a Sale Certificate dated 25-9-1979 was issued to the plaintiff and in pursuance of the same the property purchased by him was taken possession in EA No. 100 of 1979. The delivery warrant was executed on 23-1-1980 under panchanama and a receipt. Since the date of delivery of possession of the said house bearing Door No. 7-2-39/A the plaintiff has been in exclusive possession and enjoyment as absolute owner by paying property-tax to Municipality.

The plaintiff, on different occasions, filed applications along with Sale Certificate for mutation of names by the defendant-Municipality. The defendant-Municipality demanded the plaintiff to pay the arrears of tax, which were outstanding against the said house and further stated unless the arrears are paid the mutation will not be affected. The plaintiff protested for the same, as he purchased the building in Court auction. Therefore, the defendant-Municipality filed a suit in OS No. 145 of 1981 for recovery of tax against the plaintiff and admitted that the plaintiff is the owner in occupation of the house and liable to pay the arrears of tax. On demand made by the defendant the arrears of tax from 1974 to 1982 to the building in question to a sum of Rs. 461-66 paise with costs of the suit were paid under receipt bearing No. 349631 dated 25-5-1982 in spite of knowledge and admission on the part of the defendant, that the plaintiff is the owner and in the occupation of the house, colluded with some interested parties having enmity against one Saifulla Khan, who was said to be the original owner of the house and an employee of the defendant-Municipality passed a resolution in the evening of 29-1-1983 Saturday to demolish the house of the plaintiff within 24 hours so as to avoid the party approaching the Court. The defendant has knowledge that the plaintiff was posted and working at Thotaapalli Village. The plaintiff accidentally came to Karimnagar on 31-1-1983 Monday at about 8 a.m., and found the Municipality staff along with labourers and police at his house in question and were demolishing the said building for which the tenants have protested but of no avail. Therefore, the plaintiff immediately approached his advocate got drafted a petition and presented the same to the defendant at about 10.20 a.m., which was acknowledged by the defendant office. A copy of the same was also presented to the District Collector, Karimnagar but no action was taken. The house of the plaintiff was demolished each tenant was paying monthly rent of Rs. 350/- Photostat copy of the demolition is also filed into Court. The action taken by the defendant-Municipality is malicious, arbitrary and without jurisdiction in order to help another employee. Therefore, the plaintiff is entitled to recover damages and loss caused to the plaintiff. The very existence of the house for the last 12 years and collection of taxes etc., from the plaintiff by the defendant proved that the defendant has exercised the rights of the plaintiff in the house. Therefore, the plaintiff is entitled to recover damages from the defendant-Municipality to a tune of Rs. 1,15,000/- which is the value of the demolished building estimated on the present market value. The plaintiff is also entitled for compensation at the rate of Rs. 700/- per month being monthly rent

from the demolition till the date of payment of damages.

A notice as required under A.P. Municipalities Act was issued to the defendant for which, a reply was given on 2-5-1983 with untenable grounds.

8. Averments made in the written statement: The defendant who is appellant in this appeal filed written statement denying the allegations made in the plaint. It was also averred that the plaintiff has no locus standi to file the suit. The plaintiff cannot be the owner of the building and premises bearing No. 7-2-39/A of Karimnagar Municipality. The building was constructed by one Saifulla Khan, an employee of the defendant-Municipality illegally without permission from the Municipal Council of Karimnagar in Plot No. 42 which was allotted to another employee, Mr. M.S. Khan in contravention of the conditions contained in the sale deed executed by the Municipal Chairman in pursuance of Resolution No. 69/65 allotting the said plot the building was constructed. The auction proceedings and consequential proceedings of delivery etc., mentioned by the plaintiff are not binding on the defendant-Municipality. OS No. 222/74 was filed intending to deceive the Municipal Council of Karimnagar in respect of the plot. The sale proceedings are launched at the instance and instigation of Mr. Saifulla Khan. Neither Saifulla Khan was the owner of the said Plot No. 42 nor could he transfer the said house bearing No. 7-2-39 in favour of anybody also as per the condition of the sale deed executed by the defendant-Municipality in pursuance of the Resolution No. 69/65. The proceedings in OS No. 222 of 1974 were launched behind the back of the defendant and Saifulla Khan the true owner of the Plot No. 42. B. Narasamma was not the owner of the house or the site so it cannot be sold in execution. The plaintiff knows well about facts. But he deliberately did not make any enquiry with regard to the ownership. The said building was in the name of Saifulla Khan till it was demolished. The plaintiff, Saifulla Khan, B. Narsamma and the decree holders T.K. Ratnamma have colluded with each other and brought the sale proceedings into existence with regard to the building in question. The said sale is not a bona fide one. The said sale proceedings are fraudulent. In the resolution of the Municipality Saifulla Khan was allotted the house plot bearing No. 41 and a sale deed in respect of the same was executed by the defendant-Municipality in pursuance of the Resolution No. 69/85 with the following conditions:

No allottee shall sell or transfer the allotted land to anybody nor he shall let-out the house constructed on the said allotted land and that he shall not construct building other than dwelling house and in violation of any of the above conditions it was resolved that the house together with the land become the exclusive property of the Municipality.

9. Thus, it was strictly prohibited that the allotted land and the house therein shall not be transferred or let-out to anybody.

10. In the year 1971, Saifula Khan started construction without permission and so proceedings u/s 228 of A.P. Municipalities Act, 1965 were launched against

him. Consequently, Saifulla Khan filed a suit OS No. 76/71 on the file of the District Munsif, Karimnagar and obtained an injunction order against the defendant-Municipality from demolishing the building. But the said suit was dismissed on 22-2-1972. After the dismissal of the said suit, Saifulla Khan managed to get the building number and also got it assessed by suppressing the actual facts. Taking undue advantage of his position as Tax-Inspector of Municipal Council, the said Saifulla Khan was suspended from his service by the then Chairman of Karimnagar in Memo No. 1059/ C1/71, dated 31-7-1971 for the illegal acts of construction and for preventing the Municipal employees from discharging their duties for the act of tampering evidence. But subsequently the suspension order was lifted by the High Court of Andhra Pradesh in CMP No. 4662 in Writ Petition No. 3065/71, dated 19-3-1971. By virtue of the said order, he again started functioning his service as Tax Inspector and was able to manage the illegal structure numbered and assessed. In the said circumstances, the illegal construction was continued to be assessed and so arrears were accumulated for which a suit was also filed against the plaintiff, who said to have reported that he was the occupier of the said structure. But more payment of property tax as alleged by the plaintiff for the said demolished structure cannot be said that the defendant accepted the ownership of the plaintiff. It was found that Saifulla Khan constructed the illegal structure in Plot No. 42 which was allotted to Mr. M.S. Khan, another employee of Municipality, Karimnagar and as the suit OS No. 176/76 was dismissed, the defendant-Municipality as per his Resolution No. dated 29-1-1983 resolved to demolish the illegal structure. In pursuance of the resolution for demolition, the defendant is perfectly entitled to demolish the building and so the plaintiff cannot claim any damages for demolition of the structure, which was constructed illegally. u/s 258 of A.P. Municipalities Act, the plaintiff is not entitled for damages as the building was demolished in due process of law. The demolished structure was constructed with mud walls and tiled roof consisting of three rooms without doors. The alleged claim in respect of the building is speculative and exorbitant. The plaintiff cannot let-out and cannot expect any rent from the said demolished structure. Therefore, the suit is liable to be dismissed with costs.

11. On the basis of the above pleadings, the following issues were settled for trial:

- (1) Whether the plaintiff has acquired title over the suit house?
- (2) Whether the mutation proceedings written in OS No. 222/74 are binding on the defendant?
- (3) Whether the suit house still stands in the name of Saifulla Khan in the Municipal records and if so what is its effect?
- (4) Whether the structures made by Saifulla Khan are illegal?
- (5) Whether the action taken by the defendant-Municipality in demolishing the house is legal?

(6) Whether the plaintiff can claim damage from the defendant?

(7) To what relief?

12. Findings recorded by the trial Court: While answering Issue Nos. 1 to 3 the learned Judge came to the conclusion that it was established that the plaintiff purchased the plaint schedule property in the Court auction and had been in possession and enjoyment of the same from the date of delivery till the building was demolished by the defendant-Municipality. While answering Issue Nos. 4 and 5, the decision of this Court in Kurmina Venkatrama Reddy v. The Visakhapatnam Municipality represented by its Commissioner, Visakhapatnam, (supra), was referred to and ultimately came to the conclusion that the demolition of the building in question is illegal. While answering Issue No. 6, the learned Judge came to the conclusion that inasmuch as the demolition is unauthorized, the plaintiff is entitled to claim damages and ultimately decreed the suit for Rs. 71,000/- with proportionate costs and subsequent interest from the date of decree at 6% p.a. till the date of realization of the amount of Rs. 50,000/- and dismissed the rest of the claim.

13. Oral evidence: On behalf of the plaintiff, PW.1 Mohammed Iqbal Hussain and PW.2 Suleman Khan were examined. On behalf of defendant, DW.1 Ghouse Mohiuddin and DW.2 Veeralingam, P. were examined.

14. Documentary evidence: The documentary evidence on behalf of the plaintiff-respondent adduced is as hereunder:

Ex.A1 dated 25-9-1979 is the Sale Certificate issued to PW.1 by the Court, Ex.A2 dated 23-1-1980 CC of Panchanama by bailiff report and receipt, Ex.A3 dated 22-1-1980 is the CC of delivery warrant issued by the Court, Ex.A4 dated 30-9-1980 is the CC of Plaint in OS No. 145/81 filed by the defendant on the file of District Munsif, Karimnagar, Ex.A5 dated 25-8-1981 is the CC of judgment in OS No. 145/81 on the file of District Munsif, Karimnagar. Ex.A6 dated 25-5-1982 is the tax receipt issued to PW.1 by the defendant for the arrears of tax due for the building from 1974 to 1982 March, Exs.A7 to A9 are the photograph showing the acts of demolition of building by the persons of Municipality, Ex.A10 dated 2-3-1983 is the office copy of legal notice got issued by PW.1 to the defendant, Exs. All to A14 dated 3-3-1983 and 4-3-1983 are the postal acknowledgments.

15. On behalf of the defendant-appellant, the following documents were marked:

Ex.B1 dated 24-5-1982 is the application filed by PW.1 to mutate the house in his name in Municipality, Exs.B2 to B12 dated 1971-72,1972-73,1973-74, 1974-75, 1975-76, 1976-77,1977-78,1978-79, 1980-81, 1981-82, 1982-83 are the extracts and CC of property tax registers corresponding to House No. 7-2-39/A, Ex.B 13 is the true copy of Resolution No. 69 issued by Municipality, Karimnagar, Ex.B 14 dated 8-12-1982 is the notice to the plaintiff to admit link document, Ex.B14(a) dated 29-12-1982 is the endorsement of the notice dated 29-12-1982, Ex.B 15 is the true copy of approved plan TP No. 80/65 revised No.

20-66 is covered by Sy. No. 1078, Ex.B16 is the true copy of the plan with details of the persons allotted to particular plots, Ex.B17 is the CC of registration extract of allotment executed by Municipality regarding No. 41, Ex.B18 is the CC of judgment in OS No. 76/71 on the file of District Munsif, Karimnagar, Ex.B19 CC of decree in OS No. 76/71 on the file of District Munsif, Karimnagar, Ex.B20 CC of letter attached with plan map filed in OS No. 76/71 (Ex.B9 marked in OS No. 76/71, Ex.B21 CC of suspension order dated 31-7-1971, Ex.B22 dated 19-8-1971 CC of suspension order dated 31-7-1971, Ex.B23 dated 29-1-1983 true copy of resolution for demolition of Door No. 7-2-39/A, Ex.B24 dated 29-1-1983 notice to demolish the building of Saifulla Khan, Ex.B24(a) signature on the notice of Ex.B24, Ex.B25 copy affixed to the premises, Ex.B256 CC of notice demanding to in EP No. 31/76 by D.H.

16. In the light of rival submissions advanced by the Counsel on record, the following points arise for consideration in this appeal:

- (1) Whether the findings recorded by the learned Judge can be sustainable findings in the facts and circumstances of the case?
- (2) Whether the damages which had been awarded can be said to be just and reasonable in the facts and circumstances of the case?
- (3) If so, to what relief the parties would be entitled to?

17. Point Nos. 1 and 2: The respective pleadings of the parties already had been referred to supra. The respondent herein is the plaintiff, who purchased the plaintiff schedule house in Court auction for a sum of Rs. 48,200/- in EP No. 3/76 in OS No. 2/ 74 on the file of the Court of District Munsif, Karimnagar. Ex.A1 is the Sale Certificate issued in his favour and he had obtained possession of the property in EA No. 100/ 79, Ex.A2 is the CC of the proceedings under which the property was delivered. Ex.A3 is the delivery warrant, Ex.A4 is the certified copy of the plaintiff in OS No. 145/81, Ex.A5 is the judgment, Ex.A6 is the tax receipt dated 25-5-1982, Exs.A7, A8 and A9 are the photographs, Ex.A10 is the office copy of legal notice dated 2-3-1983, Exs.A11, A12, A13 and A14 are the postal acknowledgements. PW.1 deposed in Telugu about his case well supported by the evidence of PW.2. As against this, the evidence of PWs.1 and 2 is available on record. Ex.B1 is the application filed by PW.1 for mutation of the house in his name, dated 24-4-1982. The extract and certified copy of property tax registers were marked as Exs.B2 to B12. Ex.B 13 is the true copy of the Resolution No. 69 issued by the Municipality, Karimnagar, Ex.B 14 is the notice to the plaintiff to submit link document, dated 8-12-1982, Ex.B14(a) is the endorsement of the notice dated 29-12-1982, Ex.B15 is the true copy of the approved plan TP No. 80/65 revised No. 20-66 is covered by Sy. No. 1078. Ex.B 16 is the true copy of the plan in detail, Ex.B 17 is the CC of registration extract of allotment executed by Municipality regarding Plot No. 41, Ex.B 18 is the certified copy of the judgment and decree in OS No. 76/71 on the file of District Munsif, Karimnagar, Ex.B 19 is the CC of decree in OS No. 76/71 on the file of District Munsif,

Karimnagar, Ex.B20 is the CC of letter attached with plan map filed in OS No. 76/71 (Ex.B9 marked in OS 76/71), Ex.B21 CC of suspension order dated 31-7-1971, Ex.B22 dated 19-8-1971 CC of suspension order dated 31-7-1971, Ex.B23 dated 29-1-1983 true copy of resolution for demolition of Door No. 7-2-39/A, Ex.B24 dated 29-1-1983 notice to demolish the building of Saifulla Khan, Ex.B24(a) signature on the notice of Ex.B24, Ex.B25 copy affixed to the premises, Ex.B26 CC of notice demanding to in EP No. 31/76 by D.H. It is not in serious controversy that Saifulla Khan had filed the suit, OS No. 76 of 1971 on the file of the Court of District Munsif, Karimnagar, against Karimnagar Municipality, the appellant herein, the defendant in the present suit, for permanent injunction not to demolish the building and the said suit was dismissed on 29-12-1982 and it appears that a resolution was passed by the appellant on 29-1-1983 to demolish the construction within 24 hours. Ex.B24 is the copy of resolution and Ex.B24(a) is the copy of Ex.B24 addressed to Saifulla Khan and the said notice was received by Saifulla Khan on 23-3-1983. It is also pertinent to note that by virtue of Ex.B1 dated 24-5-1982 the application filed by the respondent herein, the plaintiff had intimated to the appellant-defendant, Karimnagar Municipality relating to the purchase of the property and in the light of these facts, the learned Judge recorded the findings and came to the conclusion that the demolition is unauthorized. The mere fact that Saifulla Khan was put on notice may not alter the situation. It is no doubt true that the procedure to be followed u/s 228 of the A.P. Municipalities Act had been referred to in *Kurmina Venkatrama Reddy v. The Visakhapatnam Municipality*, represented by its Commissioner, Visakhapatnam (*supra*).

18. Certain submissions were made that the said decision is not applicable to the facts of the present case, mainly on the ground that the title is in dispute. Several background facts had been narrated in this regard. This Court is not inclined to go into the said question at length for the reason that neither the prior owners nor the appellant herein-defendant-Municipality had initiated any proceedings in this regard and kept quiet as silent spectators sufficiently for a long time. Strong reliance was placed on Section 258 of the Act, which deals with limitation of compensation and the said provision reads as under:

Section 258 of the A.P. Municipalities Act 1965: 258. Limitation of Compensation: No person shall be entitled, save as provided in Sections 237, 238 and 250 to compensation for any damages sustained by reason of any action taken by the municipal authorities in pursuance of their powers under this Chapter.

19. The learned Judge also recorded that the building was demolished on 31-3-1983 and immediately a notice was issued and the suit was filed on the last date of limitation i.e., 30-7-1983 and initial of the learned Subordinate Judge with date 30-7-1983 had been noted by the learned Judge and the Head Clerk noted that the suit was filed on 30-7-1983 and the learned Judge had taken judicial notice of the fact that from 21-7-1983 to 3-8-1983 the NGOs were on strike and the plaint was presented before the Presiding Officer within the period

of limitation. In the light of the reasons, which had been recorded in detail at Para No. 15, this Court is of the opinion that no other conclusion can be arrived at in this regard hence, the findings recorded by the learned Judge are hereby confirmed.

20. Certain submissions had been made in relation to the fact that the compensation awarded is on the higher side and on a careful scrutiny of the evidence available on record, convincing evidence had not been adduced by the parties. It is needless to say that taking into consideration the purchase made by the respondent-plaintiff in the Court auction for a sum of Rs. 48,200/- and the value of the same being in relation to the site and also the building in question, this Court is of the considered opinion that it would be just and proper to award damages of Rs. 30,000/-.

21. To what relief: In the light of the findings recorded above, the suit is decreed for Rs. 30,000/- with proportionate costs and subsequent interest from the date of decree at 9% p.a., from the date of decree till its realization on the said amount of Rs. 30,000/- and the rest of the suit claim is dismissed. Thus, the decree and judgment of the learned Judge are hereby modified to the extent indicated above.

22. Accordingly the appeal is partly allowed. The parties do bear their own costs.