
(2022) 08 TEL CK 0027
In the Telangana High Court
Case No : Writ Appeal No. 1705 Of 2018

State Of Telangana

APPELLANT

Vs

Master Patluri Rohith Reddy

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Telangana Regularisation Of Unapproved And Illegal Layout Rules, 2020 — Rule 4
Telangana Urban Areas (Development) Act, 1975 — Section 58
Greater Hyderabad Municipal Corporation Act, 1955 — Section 585
Telangana Town Planning Act, 1920 — Section 44(2)(v)
Telangana Municipalities Act, 2019 — Section 238(1)
Hyderabad Metropolitan Development Authority Act, 2008 — Section 56(1)
Telangana Panchayat Raj Act, 2018 — Section 286

Citation : (2022) 08 TEL CK 0027

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

Bench : Division Bench

Advocate : Polisetty Radha Krishna

Final Decision : Dismissed

Judgement

1. Heard Mr. P.Radhive, learned Special Government Pleader appearing for the appellants and Mr. Polisetty Radha Krishna, learned counsel for the respondent.
2. This writ appeal has been preferred against the final order dated 10.10.2018 passed by the learned Single Judge allowing W.P.No.27390 of 2018 filed by the respondent as the writ petitioner.
3. The related writ petition was filed by the respondent assailing the legality and validity of the order dated 20.07.2018 of appellant No.3 declining to consider building application of the respondent.
4. Relevant portion of the order dated 20.07.2018 reads as under:

"Further it is inform you that there is a complaint petition dated 12.4.2016 from Sri E.Mahesh Kumar and Sri S.V.Shankar Reddy claiming the ownership over the subject property bearing Plot Nos.31, 32, 33 and 34 part of Sy.No.69 of Raja

Rajeshwari Township, Old Bowenpally and also submitted the sale deeds executed by the St.Marys Cooperative House Building Society Ltd., and the suit schedule property for which permission has been applied is falling part in the plot number 31 as per St.Marys layout which has been registered vide Agreement of Sale cum Irrevocable GPA 1754/156 dated 17.3.2016 executed by (1) Smt. Y.Syamala Devi W/o Y.Balaswamy Reddy (2) Sri Y.Sravan Kumar Reddy S/o Y.Balaswamy Reddy in favour of Sri S.V.Shanker Reddy S/o late Sri Venkat Reddy (copy of the document is enclosed).

In view of the above, your building application cannot be considered as per said U.O.Note B/1545/TPS/ CCP/HO/GHMC/2016/485 dated 19/24.4.2017”.

5. According to the respondent, he is the owner of house plot admeasuring 237 square yards bearing house plot No.8-7-113/2/1, Tirumala Colony, Old Bowenpally, Secunderabad. Earlier, his grandfather had executed a registered gift deed No.2260/16 dated 29.02.2016 gifting a part of the aforesaid house admeasuring 840 square yards in favour of his mother. In turn, respondent's mother executed a registered gift deed No.3085/16 dated 21.03.2016 gifting a part of the aforesaid house admeasuring 237 square yards in favour of the respondent. This is how respondent became the absolute owner and possessor of the aforesaid house plot and enjoying the same.

6. Respondent had submitted an application dated 02.04.2016 before appellant No.3 seeking permission for construction of ground + first floor in the above land. Permission was sought for on the ground that the original house had become dilapidated and needed to be reconstructed. However, the application was rejected by appellant No.3 on 25.04.2016 on the ground of pendency of appeal before this Court. Respondent clarified before appellant No.3 that his house was not the subject matter of any litigation, including the appeal referred to justifying rejection of application. Fresh application was filed but appellant No.3 again rejected the request of the respondent on 03.09.2016 this time on the ground that the sanctioned plan was not tallying with the proposed area. This came to be challenged by the respondent before this Court in W.P.No.31749 of 2016. The writ petition was allowed by this Court on 29.09.2016 holding that as long as the property in question belongs to the respondent, it was not open to appellant No.3 to deny him building permission merely on the ground that previous sanctioned plan was not tallying with the proposed plot area. Accordingly, order dated 03.09.2016 was set aside and appellants No.2 and 3 were directed to reconsider the application of the respondent for building permission.

7. Alleging non-compliance, respondent had filed contempt case before this Court. However, fresh order was passed thereafter on 15.04.2017 by appellant No.3 again rejecting the application for building permission. In W.P.No.10710 of 2018 filed by the respondent, this Court passed an interim order directing appellants No.2 and 3 to consider the application of the respondent for building permission. It was thereafter that the impugned order came to be passed.

8. Appellants, who were respondents in the writ proceedings, contested the writ petition justifying the impugned rejection order.

9. Learned Single Judge by the order dated 10.10.2018 referred to the Layout Regularisation Scheme (LRS), 2015 by which building permission was directed to be considered by collecting basic penalisation charges and compounding fee plus open space contribution charges on the present market value of the site/plot applied for building permission. Learned Single Judge also referred to Government instructions dated 06.04.2016 fixing 28.10.2015 as the cut-off date for availing the benefit under LRS 2015. Thereafter, learned Single Judge held as follows:

"15. As per the above instructions, it is incumbent on the part of the Respondents to consider the building permission application by collecting basic penalisation charges as per LRS-2015 and 33% compounding fee on the same plus 14% open space contribution charges on the present market value of the site/plot applied for building permission. Since this arrangement is intended solely for those who could not avail LRS guidelines 2015, there is no justification on the part of the 3rd respondent to fix 28.10.2015 as cut-off date. As held supra, the complaint of defendants in O.S.No.181 of 2003 cannot be a ground for rejection in the absence of any order of the Court. Therefore, this Court does not find any justification on the part of the respondents in rejecting the building permission application of the petitioner herein.

16. For the aforesaid reasons, the writ petition is allowed, setting aside the letter bearing No.3.C22/10038/2018 dated 20.7.2018 issued by the Deputy Commissioner, Circle No.24, Kukatpally Zone, GHMC, Hyderabad-3rd respondent and consequently the respondents herein are directed to consider the building application of the petitioner in accordance with U.O. Note No.B/1545/TPS/CCP/HO/GHMC/2016/485 dated 19/24.4.2017 and pass appropriate orders on the building permission application of the petitioner strictly in accordance with law within a period of three months from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs."

9.1. Thus, from the above, it is evident that learned Single Judge relied upon LRS 2015 and also Government letter dated 06.04.2016 directing consideration of building permission in plots/sites which were not applied earlier under LRS 2015. Thereafter, learned Single Judge took the view that since the above arrangement was intended only for those who could not avail LRS 2015, there could not have been any justification for fixing 28.10.2015 as the cut off date. Besides, learned Single Judge took the view that there being no injunction order in the pending civil suit, the same also could not have been a ground to deny building permission. Accordingly, direction was issued to consider building permission.

10. In the course of hearing, learned counsel for the respondent has placed before us G.O.Ms.No.131, dated 31.08.2020 of the Municipal Administration &

Urban Development (Planning III) Department, Government of Telangana. The said Government Order has been issued for regularisation of unapproved and illegal layouts in urban and rural areas. As per the said Government Order, statutory rules have been framed in exercise of powers conferred under Section 58 of the Telangana Urban Areas (Development) Act, 1975, Section 585 of the Greater Hyderabad Municipal Corporation Act, 1955, Section 44(2)(v) of the Telangana Town Planning Act, 1920, Section 238(1) of the Telangana Municipalities Act, 2019, Section 56(1) of the Hyderabad Metropolitan Development Authority Act, 2008 and Section 286 of Telangana Panchayat Raj Act, 2018. The rules are called "Telangana Regularisation of Unapproved and Illegal Layout Rules, 2020".

11. Rule 4 of the aforesaid rules provides for cut-off date for considering regularisation of unapproved layouts. Clause (a) thereof says that only those layouts and sub-division of plots with registered sale deed/title deed existing as on 26.08.2020 shall be considered for regularisation under the Telangana Regularisation of Unapproved and Illegal Layout Rules, 2020.

12. If this be the position, then the very sub-stratum of the lis before us would no longer survive, as the claim of the respondent would be covered by the Telangana Regularisation of Unapproved and Illegal Layout Rules, 2020.

13. That being the position and considering the subsequent development, we are not inclined to entertain the writ appeal.

14. Writ appeal is accordingly dismissed.

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