

(2014) 06 AP CK 0044
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 958 of 2014

T. Rama Mohana Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 42(1), 43(1)

Citation : (2014) 5 ALD 90 : (2014) 4 ALT 635

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, Sr. Counsel for Ravi Cheemalapati, Advocate for the Appellant; T. Balaswami and Potluri Vishnu Sankara Prasad, Advocate for the Respondent

Final Decision : Allowed

Judgement

Kalyan Jyoti Sengupta, C.J.—Sri C.V. Mohan Reddy, learned Senior Counsel appearing for appellant - writ petitioner at the first instance submits that 3rd respondent has been impleaded unnecessarily, as she was not made party before the learned Trial Judge nor any order of impleadment was passed by the Court. Under these circumstances, we delete 3rd respondent from the array of the respondents.

2. Learned counsel for 2nd respondent - Vijayawada Municipal Corporation, which is effective party in this matter, gave consent to disposal of the appeal finally today, taking notice of the appeal today itself.

3. This appeal has been preferred against the judgment and order of the learned Trial Judge dt.10.6.2014 whereby and whereunder the writ petition filed by the appellant before us was dismissed.

4. Short facts leading to preferring the appeal are as follows.

The appellant - writ petitioner claims to be owner of Flat No. T-2 in the third floor

of the apartment known as "Koneru Residency" in the town of Vijayawada. In the building where he resides, there has been no installation of lift by the promoter and developer. After occupying the flat along with other occupants, having regard to number of stories of the building, installation of the lift was found to be essential by the appellant. So, a lift was installed factually without taking permission of the respondent Municipal Corporation on the assumption that such permission is not required under the law. However, the respondent - Municipal Corporation felt otherwise and decided permission for installation of the lift is legally required consequently the same being unauthorized. On that ground, a notice dt.8.11.2012 was issued to the appellant - writ petitioner purporting to be under Sections 42(1) and 43(1) of the Andhra Pradesh Urban Areas (Development) Act, 1975 (hereinafter referred to as "the UAD Act") and Section 452 of Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as "the HMC Act"), asking to show cause as to why the installation of the lift should not be dismantled and removed as provided u/s 42(1) of the UAD Act and Section 452 of the HMC Act, within five days. Pursuant to the said notice, the appellant submitted a written explanation on 14.11.2012. The aforesaid explanation was not considered nor the matter was decided. However, before such a decision was taken, the petitioner approached the Writ Court with the following prayer:

"...to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in attempting to dismantle and demolish the lift and its structural provisions to the petitioner's apartments named Koneru Residency made in an extent of 419.8 Sq. Yards covered by D. No. 59-5-12/1 in R.S. No. 2/2 of Patamata, Ashok Nagar, Vijayawada, Krishna District, in spite of the regularization of the same under the proceedings RC.G-BPS-9229/2008 dated 30.06.2010 and in spite of the pendency of the explanation to the show cause notice vide U.C. No. 24 dated 08.11.2012 as illegal, arbitrary, unjust and against the principles of natural justice and to consequently direct the respondents not to dismantle or demolish the lift and its provision and to pass such other order or orders as deemed fit and proper in the circumstances of the case."

5. There has been an interim order in the writ petition directing the municipal authority not to take steps further. Thereafter, the writ petition was heard out finally on exchange of affidavits. Before the Hon"ble trial Judge, both the parties contended on merits as to legality of the installation of the lift. The Hon"ble trial Judge thought it fit to decide the matter on merit as urged by the parties and indeed decided dismissing the writ petition. After disposal of the writ petition, it appears that the respondent - Municipal Corporation straight away passed an order of removal of the lift, as obviously the respondent Corporation was of the view that the order of removal of installation of lift could be passed and further decision on the written explanation pending before it was unnecessary.

6. Sri C.V. Mohan Reddy, learned Senior Counsel appearing for the appellant,

would contend that order of removal passed by the municipal authority is absolutely illegal and in gross breach of principles of natural justice. Whatever may be the decision and findings of the Hon"ble trial Judge on merit, the Municipal Corporation was obliged to give a personal hearing in the matter before final order is passed. In addition to the above argument, without leaving the aforesaid objection, Sri C.V. Mohan Reddy submits that the Hon"ble trial Judge decided the matter on merit and it was not within the jurisdiction of His Lordship to do so. It is the primary function of the statutory authority. The legality of the action taken on the issue, by the Municipal Corporation was questioned, before the learned Trial Judge, not merit.

7. Learned counsel for the respondent - Municipal Corporation says that when the appellant - writ petitioner himself invited the Hon"ble Court to decide the matter on merit, it was not open for him to question the jurisdiction of the Hon"ble trial Judge. He, of course, fairly concedes that no further hearing could be given, as the matter was pending before the Court, pursuant to the explanation submitted by the appellant. He asserts when the entire matter was decided by the Hon"ble trial Judge, the Corporation authority" had no option but to accept the above order, as it was not challenged until the instant appeal was filed, and so the order of removal was passed.

8. Taking note of the contentions and rival contentions of the parties, we think Sri C.V. Mohan Reddy, learned counsel for the appellant, is correct in making submissions that the order of removal of installation of the lift, consequent upon passing of judgment and order of the Hon"ble trial Judge, was issued in complete violation of the principles of natural justice. It is true, the Hon"ble trial Judge decided the matter on merit though final order is required to be passed under the aforesaid statutory provisions by the Respondent - Corporation, and hearing has to be given as the Legislature mandates so, as it will be reflected from Section 452 of the HMC Act, which is set out hereunder:

452: Proceedings to be taken in respect of building or work commenced contrary to Act or bye-laws: (1). If the erection of any building or the execution of any such work as is described in Section 433 is commenced or carried out contrary to the provisions of this Act or bye-laws made thereunder, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work u/s 426 shall--

(a) by written notice, require the person who is erecting or re-erecting such building or executing such work or has erected or re-erected such building or executed such work, on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorized by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorized by

him in that behalf, to show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2). If such person shall fail to show sufficient cause as required under Clause (a) or (b) of Sub-section (1), to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.

9. Upon reading of the aforesaid Section, we think that if the action is taken u/s 452 of the Act, hearing is sine qua non. Admittedly, the action was intended to be taken u/s 452 of the HMC Act, inviting explanation. When the explanation is invited, it must reach to its logical conclusion of acceptability or non-acceptability. The findings of the Hon''ble trial Judge could be a material to take a decision, yet in the scheme of the thing as the law stands today hearing has to be given. Section 452 of the HMC Act has been designed by the Legislature with an idea for adhering to principles of natural justice. We are, therefore, of the view that the order of removal passed by the Municipal Authority without considering the explanation of the appellant, is inconsistent with the aforesaid statutory provisions, apart from in breach of the principles of natural justice. This order, of course, was challenged before us straight way as it is passed in sequel to the impugned judgment and order passed by the Hon''ble trial Judge, which is appealed against before us. We, therefore, stay the operation of the order of removal of the lift.

10. Now, while coming to the decision rendered by the Hon''ble trial Judge on merit, Sri C.V. Mohan Reddy, learned counsel for the appellant, though says that the challenge was confined to legality of the action taken, we find in writ affidavit the factual aspect justifying the installation of the lift was mentioned to have a judgment from the Hon''ble trial Judge that the installation of the lift is not illegal nor unauthorized we are of the view that the Hon''ble trial Judge ought not have decided the matter on merit, when it has to be done by the statutory authorities in compliance with the statutory provisions. Writ Court cannot usurp that power and such usurpation, at the first instance, in our considered view, is without jurisdiction, unless of course vires of that Section itself is challenged. According to us, the Hon''ble trial Judge should have decided on the question of jurisdiction and power of the authority concerned and this exercise does not appear to have been adopted by the Hon''ble trial Judge. Sri C.V. Mohan Reddy fairly submits on the legal position that the Commissioner of the respondent Municipal Corporation has power to issue a notice and to hear out the explanation. Even without considering his concession, we independently find, reading Section 452 of the HMC Act, the Commissioner has power to decide this issue. But whether installation of lift amounts to erection of building or not, has to be decided by the Commissioner himself. The Writ Court will not undertake this task in any event at the first instance. When power to decide is found, exercise of power has to be allowed considering the explanation.

11. We, therefore, set aside the judgment and order of the learned trial Judge and we pass the following order:

In the event the appellant files a fresh explanation pursuant to the show cause notice within a period of a fortnight from the date of receipt of this order, then the Commissioner of the respondent Corporation will give notice for personal hearing, consider the issue and pass a reasoned order in accordance with law. If no explanation is forthcoming within fortnight from the date of receipt of a copy of this order, the order of removal of lift which has been stayed by this Court will stand revived and will be operative. We make it clear that the Commissioner will not be swayed and influenced by the decision and reasoning of the Hon"ble trial Judge. The impugned order of removal will abide by the result of the decision so to be taken. Obviously, in the event the explanation of the appellant is accepted, the order of removal shall be withdrawn. If any adverse order is passed not accepting the explanation of the appellant, it would be for the appellant to take steps in accordance with law, as may be advised.

12. It is submitted by Sri C.V. Mohan Reddy, learned counsel for the appellant, that his client has made an application for regularization of erection and installation of the lift. Without examining question of entertainability of such request, we direct the Commissioner to deal with it also along with the above issue.

13. The Writ Appeal is accordingly allowed. There shall be no order as to costs.

14. Consequently, pending miscellaneous petitions, if any, shall also stand closed.