

(2022) 09 TEL CK 0047

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Appeal No. 553 Of 2022

Azmath Nafees Fatima

APPELLANT

Vs

State Of Telangana
And 4 OthersRESPONDENT

Date of Decision: Sept. 14, 2022**Acts Referred:**

- Constitution Of India, 1950 - Article 226, 300A
- Greater Hyderabad Municipal Corporation Act, 1955 - Section 402, 405, 428, 433, 437, 440
- Specific Relief Act, 1963 - Section 53A

Hon'ble Judges: Ujjal Bhuyan, CJ; C.V.Bhaskar Reddy, J**Bench:** Division Bench**Advocate:** R A Achuthanand**Final Decision:** Dismissed

Judgement

1. This writ appeal is directed against the order dated 23.08.2022 passed in W.P.No.23668 of 2022 whereby and whereunder the learned Single Judge has dismissed the writ petition.

2. The appellant/writ petitioner filed the writ petition seeking to issue a Writ of Mandamus declaring the impugned notice vide proceedings

No.3/15/TPS/W10/ C12/KZ/GHMC/2022 dated 10.05.2022 affixed on his property, describing it as alleged encroachment, as illegal, arbitrary and

contrary to Article 300-A of the Constitution of India.

3. The case of the petitioner is that she is the absolute owner and possessor of property bearing H.No.10-3-14/B/13, admeasuring 350 square yards,

situated at Humayun Nagar, Hyderabad, having acquired the same from her husband, namely Mohd. Abdul Hameed, through a registered Gift

Settlement Deed dated 28.08.2010. She submitted an application on 04.10.2010 enclosing required plans and other necessary documents and sought

for building permission from the respondent corporation. The respondent officials, having received the said application, have not granted building

permission even after repeated requests. As the application for building permission has not been considered within the statutory period of 30 days, the

appellant/writ petitioner has proceeded with the construction under the deemed provision of the Hyderabad Municipal Corporation Act, 1955 (briefly,

the Act hereinafter). It is also the case of the petitioner that when the respondent corporation interfered with the construction activity, she

filed O.S.No.600 of 2011 on the file of IV Junior Civil Judge, City Civil Court, Hyderabad. The Civil Court decreed the suit vide judgment and decree

dated 29.08.2011 wherein it has been categorically observed that the appellant/writ petitioner has applied for building permission and the respondent

corporation has failed to pass any orders on the said application within the statutory period and as such, the appellant/writ petitioner has proceeded

with the construction under the deemed provision under Sections 437 and 440 of the Act. The respondent corporation having allowed the decree

passed by the Civil Court to attain finality, with a mala fide intention has issued the impugned notice dated 10.05.2022 under Sections 402 and 405 of

the Act alleging that the appellant/writ petitioner has encroached Safdaria Colony Park on western side of house bearing Municipal No.10-3-15/2 and

10-3-15/3, Humayun Nagar, Hyderabad and directed to remove the encroachment within 24 hours failing which the structure would be treated as

unauthorised and further action would be taken for removal of the encroachment under Section 405 of the Act. As such, the petitioner prayed to set

aside the impugned notice.

4. A counter affidavit has been filed on behalf of the respondent corporation wherein it is stated that the appellant/writ petitioner is not the owner of

the said property nor any valid title is in existence in favour of the husband of the petitioner and merely relying upon the Gift Settlement Deed dated

28.08.2010 said to have been executed by her husband, she has made false claim over the subject property and O.S.No.600 of 2011 filed by the

appellant/writ petitioner seeking the relief of injunction simplicitor restraining the respondent corporation from interfering with the construction in the

subject property does not amount to title suit declaring the ownership in favour of the appellant/writ petitioner. Further, it is stated that the

appellant/writ petitioner has made a false claim only to grab the open space meant for public purpose. It is also stated that the office of the

Superintending Engineer, Hyderabad Circle, Telangana State Medical Services and Infrastructure Development Corporation, is intending to construct

Basthi Dawakhana in the subject property and the respondent officials never tried to interfere or demolish the subject property at any point of time and

prayed for dismissal of the writ petition.

5. A counter affidavit has also been filed by the General Secretary of respondent No.5/Association stating that there is an open space admeasuring

2000 square yards earmarked in the lay out for public use, situated opposite lane to Safdaria High School and western side of house bearing Municipal

Nos.10-3-15/2 and 10-3-15/3, Vijay Nagar Colony Road, Humayun Nagar, Hyderabad, which is being used as Municipal Park by the residents of the

locality for the purpose of morning walk, sports activities of children etc. The Government has allotted the said land for the purpose of construction of

Basthi Dhawakhana/Urban Primary Health Centre in the open space. It is also stated that the Association filed W.P.No.12210 of 2022 and this Court

has granted status quo orders in I.A.No.1 of 2022 in W.P.No.12210 of 2022 dated 09.03.2022. Despite the said order, on 20.03.2022 the

petitioner's husband in high handed manner with the support of anti social elements constructed a compound wall within the park under the guise

of orders dated 08.03.2022 passed in W.P.No.12154 of 2022. The appellant/writ petitioner has to prove ownership and title over the disputed property

and the property tax receipts enclosed by her do not confer any title and as such sought for dismissal of the writ petition.

6. After hearing the learned counsel on either side and considering the material on record, the learned Single Judge dismissed the writ petition vide

impugned order dated 23.08.2022, wherein it has been observed as under:-

“10. In the course of arguments, learned counsel for the petitioner submitted that the source of title to the petitioner’s husband who has

executed a gift deed, it is submitted, from the original owner the vendor of petitioner’s husband had an agreement of sale with possession, he

executed a sale deed in favour of the petitioner’s husband and he in turn has executed the gift deed. It is submitted that as per Section 53-A of the

Specific Relief Act, he can protect his possession and long standing possession cannot turn into encroachment. The petitioner, who has come to the

Court saying that she is the owner of the property, has to place the relevant documents on record. Except relying on the judgment and decree passed

in O.S.No.600 of 2011 and the gift deed, there is no other document to show the ownership of the petitioner. Whereas the GHMC relying on the

layout of 1972 has come up before this Court saying that the said land is earmarked for park. By conducting survey or by any summary procedure,

respondent corporation cannot decide the issues that are raised by the petitioner. Further, this Court is not convinced with the material placed before

the Court with regard to the petitioner’s possession or ownership. Further, the judgment and decree passed by the civil Court in O.S.No.600 of

2011 cannot preclude the respondents from issuing the notice impugned. Hence, this Court finds no irregularity in issuing the notice and the respondent

Corporation has jurisdiction to issue the said notice.”

7. Mr. R.A. Achuthanand, learned counsel for the appellant, submits that when the respondent corporation tried to interfere with the very same

subject property in the year 2011, the appellant/writ petitioner was constrained to approach the Civil Court by filing O.S.No.600 of 2011 seeking the

relief of perpetual injunction. The Court below, after considering the documents placed on record, particularly Gift Settlement Deed executed in favour

of the appellant/writ petitioner, and considering the provisions of the Act whereunder the appellant/writ petitioner made an application seeking building

permission and the petitioner has proceeded to make constructions and basing on the evidence on record, granted injunction restraining the respondent

corporation from interfering with the construction over the suit schedule property and the respondent corporation having allowed the judgment and

decree to attain finality, is not entitled to issue the impugned notice under Sections 402 and 405 of the Act. Much emphasis laid upon the judgment in

O.S.No.600 of 2011 dated 29.08.2011.

8. On the other hand, Mr. N. Ashok Kumar, learned Standing counsel for the Greater Hyderabad Municipal Corporation appearing for respondent

Nos.2 to 4, contends that the vendor of the appellant/writ petitioner has no title for gifting the subject property and the appellant/writ petitioner has

created the documents only for the purpose of grabbing the property which is earmarked as park for public purpose. Further, learned Standing Counsel

submits that even though no appeal has been preferred against the judgment and decree in O.S.No.600 of 2011, the findings recorded in injunction suit

do not have any bearing when title is in dispute. He also submits that even assuming that the appellant/writ petitioner is entitled to make construction

as per the deemed provision of the Act, permission under the deemed provision is valid for a period of three years extendable up to six years. Even

according to the petitioner, she submitted an application seeking building permission on 04.10.2010 and the suit was decreed on 29.08.2011. The

deemed provision for granting permission is applicable for a period of six years i.e., from the date of decree. Even if the date of decree is to be taken

into consideration i.e., 29.08.2011, the period of six years lapses by 2017 and after expiry of the said period, under the guise of injunction order the

appellant/writ petitioner without obtaining any valid permission is now proceeding with the construction on the disputed property and as such, she is not

entitled for any relief. Learned Standing Counsel also argued that the members of respondent No.5/Association has filed W.P.No.12210 of 2022

stating that the Municipality is intending to construct Urban Primary Health Centre, commonly called as Basthi Dhawakhana, in the open space

earmarked in the lay out for park and the said writ petition was disposed of by this Court directing the respondent corporation not to use park space

for any other purpose The subject property claimed by the petitioners therein and the subject property claimed by the appellant/writ petitioner herein is

one and the same which is meant for public purpose. Further, learned Standing Counsel states that the respondent corporation has already demolished

the room, gate and compound wall and thereafter the impugned notice has been issued under Sections 402 read with 405 of the Act on 10.05.2022

only with a view to provide an opportunity to the petitioner to make representation. Learned Standing Counsel further states that the appellant/writ

petitioner, instead of submitting explanation in support of his claim, only relying upon the findings in the injunction suit, approached this Court seeking

execution of the decree passed by the Civil Court in writ proceedings under Article 226 of the Constitution of India and strongly supported the

reasoning given by the learned Single Judge and prayed for dismissal of the writ appeal

9. We have carefully considered the aforesaid submissions of the learned counsel for the respective parties and perused the record.

10. It is the case of the appellant/writ petitioner that she is the absolute owner and possessor of house bearing No. H.No.10-3-14/B/13, admeasuring

350 square yards, situated at Humayun Nagar, Hyderabad, by virtue of the registered Gift Settlement Deed dated 28.08.2010 executed by her

husband and that O.S.No.600 of 2011 filed by her before the Civil Court was decreed on 29.08.2011. Except the above two documents, the petitioner

has not filed any documents in support of her title to establish that she is lawful owner of the subject property. The appellant/writ petitioner has

instituted O.S.No.600 of 2011 on the file of IV Junior Civil Judge, City Civil Court, Hyderabad, seeking the relief of injunction simplicitor against the

respondent corporation, but the same does not disclose the schedule of the property. Further, the appellant/writ petitioner filed W.P.No.12154 of 2022

before this Court on the very same set of facts and in respect of the same subject property relying upon the findings recorded in the very same suit.

11. From the above, it is clear that the appellant/writ petitioner, on one pretext or the other, has been instituting repeated writ petitions before this

Court claiming the subject property without enclosing the documents in support of her claim more particularly the documents relating to the title of the

property. There is a serious dispute whether the subject property is forming part of the open space earmarked for public park in the lay out approved

by the municipal corporation or the property belongs to the appellant/writ petitioner as claimed in the injunction suit. The appellant/writ petitioner,

instead of approaching the competent Civil Court by filing a suit for declaration of title, only to prevent the authorities from initiating action for removal

of illegal constructions over the subject property, has instituted the writ petitions before this Court.

12. As contended by the learned Standing Counsel for the respondent corporation, injunction granted in favour of the appellant/writ petitioner in

O.S.No.600 of 2011, under the deemed provision of law, is in operation for a period of three years from the date of decree and thereafter for an

extended period up to six years. Admittedly, the suit for injunction filed by the appellant/writ petitioner before the Civil court was decreed on

29.08.2011. Even if the extended period up to six years is taken into consideration, the period prescribed for deemed provision lapsed in the year 2017.

After expiry of the said period, if the appellant/writ petitioner wants to proceed with the construction, she has to necessarily submit an application

seeking building permission under Sections 428 and 433 of the Act and in the absence of making application, the appellant/writ petitioner is not entitled

to the benefit of deemed provision under Section 437 of the Act. Therefore, if any construction made in contravention of the provisions of the Act,

without obtaining building permission, is illegal and the respondent corporation is entitled to remove the same following the procedure prescribed under

the Act. The appellant/writ petitioner has also not placed any material before this Court to draw inference that she has issued a prior intimation notice

to the Municipal Commissioner informing that in view of not granting building permission she is proceeding with the construction strictly adhering to the

building regulations and rules made under the Act. In the absence of such notice being issued by the appellant/writ petitioner, she is not entitled to

proceed with the construction under the deemed provision of law. Further, as per findings recorded by the learned Single Judge, subject property of

the writ petition is demarcated as open space vide permit No.38/33 dated 24.10.1972 to an extent of 2000 square yards and out of the same, an extent

of 292.60 sqm/350 square yards is encroached by the appellant/writ petitioner by raising illegal constructions and the remaining extent of 1650 square

yards is being utilised for nursery by the municipal corporation. In this background of the case, we are unable to agree with the contentions of the

learned counsel for the appellant/writ petitioner and interfere with the order passed by the learned Single Judge. Therefore, the writ appeal deserves to

be dismissed.

13. The writ appeal is accordingly dismissed.

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