

(2024) 03 TEL CK 0021

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 3092 Of 2023

A. Mallesh Alias A.Mallesh Yadav

APPELLANT

Vs

State Of Telangana And 3 Others

RESPONDENT

Date of Decision: March 28, 2024

Acts Referred:

- Greater Hyderabad Municipal Corporation Act, 1955 - Section 427, 428, 438

Hon'ble Judges: N.V. Shravan Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

1. This writ petition has been filed seeking a writ of mandamus to declare the action of respondents more particularly respondent No.2 in passing the orders dated 02.01.2023 with Lr.No.1/C20/22171/2018/02/E-office No.226495 granting building permission in favour of respondent No.4 in respect of land forming part of Sy.Nos.165/P, 166/P, 167/P and 169/P situated at Maseed Banda, Kondapur, Serlingampally mandal, Ranga Reddy District without issuing notice to the petitioners and without conducting enquiry as illegal, arbitrary and without following due process of law as envisaged under the provisions of GHMC Act, 1955 and consequently to set aside the order dated 02.01.2023 with Lr.No.1/C20/22171/2018/02/E-Office No.226495 on the file of respondent No.2.

Brief facts of the case:

2. This writ petition is filed by the GPA holder of petitioner Nos.1 to 5. The brief facts of the case are that the petitioners along with Late A.Ramaswamy are the biological brothers and are sons of Late A.Sathaiah. The said Late A.Ramaswamy died on 03.09.2021 leaving behind his sons as his sole surviving legal heirs. The petitioner submits that they along with Late A.Ramaswamy are the absolute joint owners of agriculture land admeasuring Ac.2-00 gts., in Sy.No.169 (Part), situated at Kondapur Village, Serilingampally Mandal, GHMC, Ranga Reddy District (for short 'the subject

property' hereinafter) have acquired the same by way of purchase under registered sale deed dated 24.12.1997 bearing Doc.No.6501/1998 from its previous owners and since from the date of purchase they are in peaceful possession and enjoyment of the subject property. It is submitted that originally Buyya Narayana was the possessor of the land admeasuring Ac.16-01 gts., in Sy.No.169 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District which includes the present subject property in the capacity as protected tenant and his name was also mutated in the revenue records as pattadar and possessor.

3. The said Buyya Narayana died on 28.01.1990 leaving behind his seven (7) sons along with heirs of his predeceased son B.Venkataiah. They have executed a Registered General Power of Attorney bearing Doc.No.140/1997 appointing Mr.Y.Jaihind Reddy as their lawful attorney in respect of land admeasuring Ac.6-00 guntas in Sy.No.169 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District out of Ac.16-01 gts., in Sy.No.169 of Kondapur Village, Serilingampally Mandal, Ranga Reddy District who has later alienated the subject property to the petitioners herein and thus, petitioners have become absolute owners and possessors of the same.

4. It is submitted that the subject property was encircled with compound wall and a temporary shed was erected in it for watch and ward. It is further submitted that on 30.07.2019, respondent No.4 along with one Anil Kumar Yadav and five (5) others have come to the subject property and damaged the property and contended that the petitioners are in illegal possession of the property as the said property belongs to them. Thereafter, the petitioners approached the Office of Registrar and verified the encumbrances in respect of subject survey number and noticed that respondent No.4 and others alleged to have acquired part of land in the subject survey number which is absolutely unconcerned to the subject property. It is further submitted that the petitioners have obtained the registered sale deeds which refers the names of respondent No.4 and others and that the property included in such deeds are absolutely distinct and different with that of the subject property.

5. In such circumstances, petitioners filed a suit in O.S.No.367 of 2019 on the file of XV Additional District Judge, Ranga Reddy at Kukatpally against respondent No.4 and others for declaration and consequential injunction in respect of subject property. Petitioners have also filed I.A.No.1913 of 2019 in O.S.No.367 of 2019 to restrain respondent No.4 and others from peaceful possession and enjoyment. The said Court was pleased to grant interim injunction vide order dated 26.09.2019 and the said suit is pending for adjudication.

6. It is further submitted that during the pendency of the said suit, the representatives of STARLITE GLOBAL ENTERPRISES (India Limited) have come to the subject property on 15.02.2021 and tried to measure it and dumped the material to carry construction activity which was resisted by the petitioners. Later, the representatives of the said company revealed that the said company had obtained

land admeasuring 5782.52 sq.yds., in Sy.No.165 to 169 of Kondapur Village from one Dr.Nageswar Reddy which forms part of subject property, under Development Agreement-cum-General Power of Attorney dated 17.09.2019 bearing Doc.No.19906/2019. When the petitioners verified with the concerned Offices, it was revealed that Y.Jaihind Reddy who is Power of Attorney of Buyya Rukkamma and 23 others had alienated excess land than Ac.6-00 gts., in favour of B.Balraj @ Balraj Goud, Medchal Lakshmiamma, M.Jyoshna and Y.Anthi Reddy. It is further submitted that the said Y.Jaihind Reddy alienated their respective extents in favour of various persons as per their lawful entitlement and had also alienated the land to an extent of Ac.6-00 gts., in subject survey number without holding any lawful entitlement and created unlawful documents. The above said B.Balraj, Medchal Lakshmiamma, M.Jyoshna and Y.Anthi Reddy further alienated the land in favour of various persons.

7. It is further submitted that certain alienations were made in Sy.Nos.169 (Part), 165, 166, 167 situated at Kondapur Village, Serilingampally Mandal to various parties and the petitioners knowing the concern of Dr.Nageswar Reddy filed I.A. to implead him as defendant No.8 in O.S.no.367 of 2019 on the file of XV Additional District Judge, Ranga Reddy District at Kukatpally and the same is pending for adjudication. It is further submitted that said Y.Jaihind Reddy was very much aware about the ownership and possession of the petitioners over the subject property, despite knowing the same had created fraudulent documents and alienated excess extent of land to various other persons including Dr.Nageswar Reddy and Starlite Global Enterprises by misrepresenting respondent No.2 and Punjab National Bank and created various sale deeds.

8. It is submitted that respondent No.4 and others are indulging in criminal activities which deserve for prosecution for which necessary steps were initiated. It is also submitted that respondent No.4 and others are trying to encumber the subject property relying on various sale deeds and one gift deed dated 17.05.2019 was executed to create cloud on the ownership and possession of petitioners over the subject property. Therefore, petitioners filed a suit in O.S.No.112 of 2021 for declaration and consequential injunction on the file of XV Additional District Judge, Ranga Reddy District at Kukatpally and the same is pending for adjudication. It is further submitted that petitioners have filed I.A.No.1913 of 2019 in O.S.No.367 of 2019 for grant of interim injunction, accordingly exparte injunction was granted on 26.09.2019 restraining respondent No.4 and its men from interfering with the possession of the petitioners. Aggrieved over the same, respondent No.4 filed I.A.No.2321 of 2019 in I.A.No.1913 of 2019 in O.S.No.367 of 2019 seeking to vacate the interim orders dated 26.09.2019. Upon hearing the same, the XV Additional District Judge dismissed the said I.A.No.2321 of 2019 vide order dated 21.01.2021. Aggrieved again, respondent No.4 herein preferred C.M.A.No.121 of 2021 before this Court and this Court vide order dated 08.03.2021 allowed the same remanding back the matter for fresh disposal with a direction to maintain status quo till the disposal of I.A.No.2321 of 2019.

9. Thereafter, XV Additional District Judge vide orders dated 12.07.2021 dismissed the said I.A.No.2321 of 2019. Aggrieved over the same, respondent No.4 preferred C.M.A.No.342 of 2021 which is pending for adjudication. Respondent No.4 herein also preferred C.M.A.No.347 of 2019 against the docket orders dated 03.08.2021 in I.A.No.1913 of 2019, which is also pending for adjudication.

10. The petitioner further submits that, respondent No.4 made an application dated 21.11.2018 with reference No.1/C20/22171/2018 to respondent No.2 herein for grant of building permission in respect of part of subject property and respondent No.2 without conducting any enquiry and without issuing any notices to the concerned parties like the petitioners issued a Fee Intimation Letter dated 11.03.2019 directing to remit an amount of Rs.1,66,53,310/- for grant of building permission. Aggrieved over the said letter, petitioners herein filed W.P.No.28703 of 2019 before this Court. During the hearing, respondent No.2 placed a letter before this Court stating that no permission was granted as of then and objections dated 17.11.2019 raised by the petitioners will be examined in detail by calling all parties and conduct hearing before disposal of the building permission application. Recording those submissions, this Court dismissed W.P.No.28703 of 2019 vide order dated 27.01.2020.

11. It is submitted that thereafter, respondent No.2 conducted hearing on 07.08.2020, 21.08.2020 and 28.08.2020 and passed orders dated 18.09.2020 with Lr.No.1/C20/22171/2018/674/E-office No.226495 observing that 'the decision with regard to building permission will be taken based on the outcome of O.S., which is still pending' and advised both the parties to approach Civil Court for redressal of dispute. Questioning the said order dated 18.09.2020 issued by respondent No.2, respondent No.4 filed W.P.No.17287 of 2020 before this Court and this Hon'ble Court vide order dated 11.11.2020 had set aside the order dated 18.09.2020 and remanded the matter to respondent No.2 for fresh consideration after affording opportunity of hearing to both parties.

12. Thereafter, respondent No.2 had taken up matter afresh and conducted hearing on 04.01.2021 and 22.01.2021 while receiving the written arguments, directed the parties to approach Civil Court for redressal of the dispute and basing on the outcome of the Original Suit, further action will be taken on building permission application of respondent No.4. Consequent to such orders dated 13.03.2021, respondent No.4 approached this Court once again by way of W.P.No.15026 of 2021 seeking to set aside order dated 13.03.2021 and this Court after detailed hearing was pleased to dismiss the writ petition vide order dated 29.07.2022 confirming the orders dated 13.03.2021 on the file of respondent No.2. Thereafter, respondent No.4 aggrieved by the said order dated 29.07.2022, preferred a writ appeal in W.A.No.563 of 2022 before this Court. A Division Bench of this Court has allowed the writ appeal vide judgment dated 18.10.2022 setting aside order of respondent No.2 dated 13.03.2021 with a direction 'to consider the application of applicant

(respondent No.4) herein for grant of building permission afresh within a period of four (4) weeks from the date of receipt of a copy of this order.'

13. It is further submitted that respondent No.2 without issuing any notice to the petitioners and without conducting any enquiry and without following due process of law under GHMC Act, 1955 passed the impugned order dated 22.01.2023 granting building permission to respondent No.4 and the copy of same was sent to the petitioner. Questioning the same, the present writ petition i.e., W.P.No.3092 of 2023 is filed.

14. This Court on 03.02.2023 has granted status quo and passed the following order:

"Notice before admission.

Personal notice to R.4 is permitted.

List on 24.02.2023.

Status quo obtaining as on today shall be maintained by both the parties till then."

15. Thereafter, respondent No.4 filed I.A.No.2 of 2023 to vacate the interim order granted on 03.02.2023. In the counter affidavit it is submitted that question of hearing the petitioners once again after the judgment in W.A.No.563 of 2022 passed on 18.10.2022, by respondent No.2 does not arise at all and the petitioners cannot complain that they should be heard once again and on that ground alone cannot seek to set aside the order of respondent No.2. It is further submitted that this Court has categorically declared in its judgment in W.A.No.563 of 2022 that the mere pendency of the suits cannot ipso facto act as prohibition on the statutory powers exercised by the Commissioner. It is further submitted that the entire lis relates to the building permission granted by the GHMC in favour of petitioner/respondent No.4 which came to an end by way of judgment of this Court in W.A.No.563 of 2022 dated 08.10.2022 to which the petitioners were parties and they have raised all possible contentions.

16. It is further submitted that the injunction granted in favour of the petitioners in I.A.No.1913 of 2019 in O.S.No.367 of 2019 dated 26.09.2019 has been suspended by this Court in C.M.A.No.347 of 2019 and orders passed in I.A.No.2321 of 2019 in O.S.No.367 of 2019 was also suspended in C.M.A.No.342 of 2021 vide order dated 03.08.2021 and the said orders are still in force and by virtue of the same and at present petitioners do not have any orders granted by the Civil Court in their favour. That being so, respondent No.2 is entitled to consider the application without reference to the pendency of the civil suit.

17. It is further submitted that subsequent to the judgment in W.A.No.563 of 2022 respondent No.4 followed up with the office of respondent No.2 vigorously and had addressed letters on 20.10.2022 and 28.10.2022 and thereafter GHMC served him with letter dated 02.01.2023 seeking payment of Rs.42,81,912/-towards CRMP

charges and labour cess and Rs.51,65,262/-towards City Level Infrastructure Impact Charges and that respondent No.2 had also informed respondent No.4 and their GPA vide letter dated 02.01.2023 stating that the applicant shall submit notarized affidavit that it will comply with the adverse orders if any at a later date in any Court case/litigation and giving liberty to GHMC for taking action as per Rules and thereafter the petitioner/respondent No.4 made payment as required by the GHMC and also submitted notarized affidavit and filed the same in the office of respondent No.2 and in view of the same pray this Court to vacate the orders dated 03.02.2023 and dismiss the writ petition.

18. The petitioner has filed a reply affidavit would submit that as per the observations of Hon'ble Division Bench, it is evident that respondent No.2 has to consider the application afresh and that the petitioners has right to be heard and that the impugned proceedings are not in accordance with the judgment in W.A.No.563 of 2022 and reiterated the same facts as stated in the writ petition and would further submit that in order to safeguard petitioners title over the property, the building permission cannot be granted.

19. Respondent No.2 has filed a counter affidavit stating that a proposal was submitted by respondent No.4 in DPMS file No.1/C20/22171/2018 for Multistoried Residential Building permission with Tower-A and B consisting of 2-Basements+Ground+13 upper floors each tower in Sy.Nos.165/P, 166/P, 167/P and 169/P, Maseeb Banda, Kondapur, Serilingampally on the site area 4791.71 sq.mts. It is further submitted that petitioner No.1 through GPA holder lodged a complaint stating that the petitioners are the absolute owners of the property by virtue of registered document No.6501/1998 and that respondent No.4 misrepresented the facts and placed fabricated documents to grab the subject property and tried to interfere with the possession of the property and thereby requested to cancel the building permission in File No.1/C20/22171/2018.

20. Thereafter, respondent No.2 vide letter dated 27.01.2020 informed the petitioners that no permission was issued on the subject land and that objection petitioner will be examined in detail and if necessary, a hearing will be conducted calling all the parties concerned before disposing of the building permission application filed by respondent No.4. It has also come to the knowledge of respondent No.2 that the petitioners have filed suits before XV Additional District Sessions Judge, Ranga Reddy District against third parties in respect of subject property and the same is pending for adjudication and petitioners also filed a writ petition in W.P.No.28703 of 2019 praying to cancel the permission dated 11.03.2019 and this Court was pleased to dismiss the said writ petition on 27.01.2020. Thereafter, hearings were conducted on 07.08.2020, 21.08.2020 and 28.08.2020 along with petitioners and respondent No.4 through Video Conference (Google meet) and after examining the written arguments submitted by both the parties, Hearing Orders No.1/C20/22171/2018/674 dated 18.09.2020 were passed holding

that the decision with regard to the building permission will be passed on the outcome of O.S.No.367 of 2019 which is pending between the petitioners and the third parties and that both the parties were advised to approach the Civil Court for redressal of dispute.

21. Aggrieved by the said orders, respondent No.4 approached Hon'ble High Court vide W.P.No.17287 of 2020 praying to set aside the impugned order dated 18.09.2020 and this Court vide order dated 11.11.2020 through Video Conference allowed the writ petition and remanded the matter back to respondent No.2 to pass orders afresh strictly in accordance to law within a period of four (4) weeks. In compliance of the said orders, hearing was conducted on 04.01.2021 with both the parties and after examining the written arguments with documents filed by both the parties, the answering respondent passed Hearing Orders on 13.03.2021 holding that since O.S. is pending, both the parties were directed to approach Civil Court to redress their dispute and that basing on the outcome of the O.S., further action will be taken on building permission application.

22. Thereafter, aggrieved by the above hearing orders, respondent No.4 once again approached this Court by way of W.P.No.15026 of 2021 to set aside the hearing orders issued by this respondent and this Court vide order dated 29.07.2022 has dismissed the writ petition observing as under:

"Therefore, it is clear that the possession of the subject property is under dispute and is yet to be decided and the Civil Court is not only seized of the matter, but has granted an interim order, which is in force. In such circumstances, the Commissioner cannot be found fault with for directing the parties to approach the Civil Court. A Coordinate Bench of this Court in the case of V.Jaya Prakash Vs. Commissioner of Municipality, Khapra Municipality, Kapra, R.R. District and another 2 in W.P.No.3979 of 2003 dt.24.11.2003 has considered similar issue and also various precedents on the issue to hold that it is always open to the Commissioner to come to a prima facie conclusion and reject permission and advise the parties to go before Civil Court for a decision on the title dispute."

23. Aggrieved by the said orders, respondent No.4 preferred W.A.No.563 of 2022 and this Court vide judgment dated 08.10.2022 allowed the writ appeal.

24. Thereafter, respondent No.4 filed representations dated 20.10.2022 and 28.10.2022 requesting to consider the building permission duly enclosing the orders of the Division Bench comprising the judgment of the Hon'ble Division Bench in W.A.No.563 of 2022. In compliance of the said judgment in W.A.No.563 of 2022, the proposal of respondent No.4 was examined in terms of existing rules and G.Os in force and thereafter respondent No.2 considered for grant of permission for multi-storeyed building in Sy.No.165/P, 166/P, 167/P, 169/P, Maseed Banda, Kondapur, Serilingampally in favour of respondent No.4 as the prima facie factors were satisfied and the same was informed to both the parties vide letter dated

02.01.2023 and accordingly respondent No.4 was informed to pay additional fees/charges and respondent No.4 vide letter dated 03.01.2023 informed that they have paid the same. It is further submitted that the proposal has been considered in compliance that the orders in W.A.No.563 of 2022 dated 08.10.2022 and the respondent has also been directed to submit notarized affidavit that it shall comply with the adverse orders at a later date in any Court case/litigation, giving liberty to the office of the answering respondent for taking action as per rules and that permission is not yet released. In the meantime, the petitioner has filed the present writ petition and this Court has granted an order of status quo on 03.02.2023 and accordingly building permission is not yet released and eventually denies the other allegations and prays to dismiss the present writ petition.

25. Thereafter, vide I.A.No.3 of 2023 petitioner/respondent No.4 had filed material documents stating that in furtherance to the letter dated 02.01.2023 requiring the respondent to file notarized affidavit to the effect that applicant shall comply in any Court case/litigation for taking action as per rules, the respondent No.4 had already filed an affidavit and the same was acknowledged on 03.01.2023. It is further submitted that such practice of GHMC would protect the interest of any third party. It is further submitted that respondent No.4 has already paid an amount of Rs.1,66,53,310/- on 16.11.2019 when the temporary approval was granted on 17.01.2019 and the GHMC has inspected the said land and requested respondent No.4/petitioner to give consent for acquiring an extent of 682.44 sq.yds., for the purpose of road widening and that the petitioner registered gift deed dated 17.05.2019 in Doc.No.8820/2019 in respect of such extent in Sy.No.165, 166, 167 and 169 and that GHMC has issued TDR Certificate permitting the petitioner/respondent No.4 to use TDR value along with all area either in subject site or elsewhere.

26. It is further submitted that subsequent to the orders passed, respondent No.4 has paid Rs.42,81,912/- towards CRMP charges and labour cess and Rs.51,65,262/- towards City Level Infrastructure Impact Charges and as such fulfilled all requirements as per GHMC byelaws and also submitted notarized affidavit which will take care of the interest of the third parties like the petitioners.

27. Heard learned counsel for the petitioners; learned Government Pleader for Municipal Administration and Urban Development for respondent No.1 and learned Standing counsel for respondent Nos.2 and 3 and Mr.Vedula Srinivas, learned senior counsel for respondent No.4. Perused the material available on record.

28. In the orders passed in W.A.No.563 of 2022 dated 08.10.2022, the Division Bench has elaborately considered the provisions of GHMC Act, powers of Commissioner under Section 427 particularly his power to examine the title of application for granting building permission and the provisions of the Act which would enable the Commissioner to entertain building applications. It is further observed that the Commissioner having satisfied prima facie with the title and possession has granted tentative approval in file dated 17.01.2019 and directed the appellant to remit a sum

of Rs.1,66,53,310/- and the same was paid on 16.11.2019 and further revenue and irrigation authorities have also granted permission for converting the land from agriculture to non-agriculture purposes and also electricity connection stands in the name of the appellant. The said documents, in their view, would prima facie satisfy the requirement for grant building permission subject to title dispute being resolved by the competent Court and held as follows:

"17. A reading of the above orders would disclose that injunction orders granted in favour of respondent Nos.4 to 9 in I.A.No.1913 of 2019 in O.S.No.367 of 2019 dated 26.09.2019 are suspended and the same are not in operation. No doubt, when there are restraining orders issued by the competent Courts from entertaining building applications, or granting building permission, they have to be obeyed strictly, unless the order of injunction is vacated/set aside by the competent Court of jurisdiction. But mere pendency of the suits cannot ipso facto act as a prohibition on the statutory powers exercised by the Commissioner under the provisions of the Act. Significantly, as on date there is no direction in the suits restraining the statutory authority either from entertaining building application or from grant of building permission or preventing the authority to examine the said applications strictly in accordance with Sections 428 and 438 of the Act.

18. In *Mir Asad Sayeed Khan Asad Khan* (1 supra) this Court while examining the scope and ambit of the powers of the Commissioner of the Municipal Corporation under Sections 428 and 429, after referring to various judgments, held as follows:-

"33. We agree with the above observations in the above case that if applications for building permissions are rejected merely on the ground of third parties raising disputes of title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title."

19. For the aforementioned reasons, we allow the writ appeal and set aside the order passed by respondent No.2 in Lr.No.1/C20/ 22171/2018/234, E-office No.226495, dated 13.03.2021 with a direction to consider the application of the appellant for grant of building permission afresh within a period of four weeks from the date of receipt of a copy of this order. It is clarified that the observations made for the purpose of disposal of the writ appeal shall not have any bearing on the merits of the civil suits pending adjudication before the concerned courts."

29. On a careful analysis of the said observation, directing respondent No.2 to consider the building application afresh and that respondent No.2 vide order dated 02.01.2023 considered the application as per the provisions of GHMC Act and informed respondent No.4 to submit notarized affidavit that the applicant shall comply the adverse orders if any at a later date in any Court case/litigation and has given liberty to GHMC to take action as per rules. The petitioner has paid the requisite fees/charges and has executed an affidavit dated 03.01.2023 and has

confirmed that respondent No.4 would undertake to comply with the conditions stipulated by the GHMC and also abide by any adverse orders passed in O.S. pending before XV Additional District Judge which is still pending for final adjudication.

30. After perusal of the entire record, it is explicit that respondent No.2/GHMC has complied with the judgment of the Hon'ble Division Bench in W.A.No.563 of 2022 dated 29.07.2022 and has issued the impugned letter dated 02.01.2023 and to that effect, respondent No.4 has also complied with all the conditions stipulated by respondent No.2/GHMC Authorities and paid all the requisite charges and also submitted notarized affidavit dated 03.01.2023.

31. Therefore, there is no reason to interfere with the order passed by respondent No.2/GHMC dated 02.01.2023 and accordingly the writ petition fails. It is also clarified that the observations made in this order shall not have any bearing on the merits of the Civil Suit pending for adjudication before the concerned Courts and it is also made clear that the parties are at liberty to seek appropriate remedy as available under law.

32. With all the above observations, this writ petition is accordingly dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.