

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.7132 of 2024

ORDER:

This Writ Petition is filed for issuance of a Writ of Mandamus declaring the action of respondent No.3 in not taking action against the unauthorized construction raised by respondent Nos.4 to 6 without obtaining prior building permission and without having valid title to the land admeasuring Ac.0.36 gts on Plot No.327, in Sy.Nos.78 to 93 situated at Raja Rajeswara Nagar of Kondapur Village, Serilingampally Municipality, GHMC, Ranga Reddy District despite receipt of petitioner's complaint/representation dated 28-02-2024, as illegal, arbitrary and in violation of Telangana Municipalities Act, 2019 and TS-bPASS Act, 2020 and Articles 21 and 300-A of the Constitution of India and consequently direct respondent No.3 to demolish the unauthorized structures raised by respondent Nos.4 to 6.

2. Heard Sri B. Mayur Reddy, learned Senior Counsel for Sri Saini Aravind, learned Counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing on behalf of respondent Nos.1 and 2, Sri

M.A.K. Mukheed, learned Standing Counsel appearing on behalf of respondent No.3 and Sri Unnam Muralidhar Rao, learned Senior Counsel for M/s. Unnam Law Firm, learned Counsel appearing on behalf of respondent Nos.4 and 5, and perused the record. With the consent of learned Counsel appearing for the parties, the Writ Petition is taken up for hearing and disposal.

3. Shorn of unnecessary details, the case of the petitioner is that he is the owner of plot No.327 admeasuring 720 sq. yards in Sy.No.82 situated in Raja Rajeshwari Nagar at Kondapur village, Serilingampally Mandal, Ranga Reddy District having acquired the same through family settlement; and that respondent Nos. 4 to 6 herein without obtaining any building permission have made unauthorized construction of commercial structure on the land admeasuring Ac.0.36 gts in Sy.No.82 and 83 part; and was also running a commercial establishment therein.

4. It is the further case of petitioner that on noticing the aforesaid unauthorized construction made by the unofficial respondents, he had approached the respondent authorities and made an application under the Right to Information Act, 2005

requesting the authorities to furnish information as to whether any building permission has been granted in respect of property located on Plot No.327 in Sy.Nos.78 to 93 situated at Raja Rajeshwari Nagar, Kondapur, Serilingampally Municipality, Ranga Reddy District; and that in response to the aforesaid application, the respondent authorities by their reply have categorically stated that no building permissions were traceable for the construction made on Plot No.327 in Sy.Nos.78 to 93 situated at Raja Rajeshwari Nagar, Kondapur, Serilingampally Municipality, Ranga Reddy District.

5. Petitioner further contends that on receiving the aforesaid intimation from the respondent authorities under the RTI Act, he had approached the respondent authorities and lodged a complaint/representation on 28-02-2024 requesting the 3rd respondent to initiate action against the unauthorized construction made by the unofficial respondents by exercising their powers under the Greater Hyderabad Municipal Corporation Act, 1955 and TS-bPASS Act, 2020.

6. Petitioner further contends that in spite of him approaching the respondent authorities and submitting a complaint / representation on 28-02-2024, no action has been initiated and hence, this Writ Petition.

7. *Per contra*, learned Standing Counsel appearing on behalf of respondent Nos.2 and 3 submits that on receiving the complaint/representation from the petitioner, the respondent authorities have inspected the site under reference and observed that the owner of plot No.327 of Sy.Nos.78 to 93 situated at Raja Rajeshwari Colony, Kondapur village, Serilingampally Mandal had unauthorisedly constructed ground floor (shed), wherein a commercial establishment of a Super Market is being run.

8. Learned Standing Counsel further submits that the authorities, on noticing the aforesaid unauthorized construction, have issued a show cause notice dated 22-03-2024, with a direction to submit explanation as to why the portion of construction made in contravention of the sanctioned plan should not be removed, altered or pulled down.

9. Learned Standing Counsel further submits that on the aforesaid show cause notice being issued, neither the owner nor the Occupier had submitted any reply thereto, and thus, the respondent authorities by exercising the powers conferred under the Greater Hyderabad Municipal Corporation Act, 1955 and TS-bPASS Act, 2020 had passed a speaking order dated 10-04-2024 directing the Owner / Occupier to remove the shed constructed contrary to the sanctioned plan and to bring back the building in conformity with the sanctioned plan within 15 days from the date of receipt of the notice, failing which the Owner/Occupier was informed that further action will be taken up by the Authorities under the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 and TS-bPASS Act, 2020.

10. By stating as above, learned Standing Counsel appearing on behalf of respondent authorities has placed before this Court a copy of the speaking order dated 10-04-2024 for perusal of the Court.

11. Learned Senior Counsel appearing on behalf of respondent Nos.4 and 5 appearing through virtual mode, on the other hand, contended that the petitioner has no *locus standi* to maintain the present Writ Petition and sought for time to file a counter affidavit.

12. Further, when this Court was pointing out to the learned Standing Counsel in a lighter vein that it appears that the authorities would wake up to take action only when a citizen approaches this Court, the learned Senior Counsel appearing for the respondent No. 4 & 5, addressing the Court in a high pitched tone had questioned this Court as to why it is attributing sarcasm to the issue.

13. I have taken note of respective submissions urged.

14. Before delving into the issue at hand, with regard to the manner in which the learned Senior Counsel appearing for the unofficial respondent sought to present himself in the matter, it is to be seen that this Court *vide* order dated 10.04.2024 in W.P. No.8719 of 2024 had expressed its concern over the developing trend among the learned Counsel in addressing the

Court in high pitched tone in order to deter the Court from adjudicating the matter. While noting so, this Court had cautioned that such practices would sow discord and ruin the harmony with the bench. However, it is disconcerting to note that such conduct is being repeated once again, that too by a Counsel who was conferred with a Senior Designation only recently.

15. At this juncture, it is appropriate to echo the words of the Hon'ble Supreme Court in *O.P. Sharma and Ors. v. High Court of Punjab and Haryana*¹, wherein it was held that violation of professional ethics is not only unfortunate but is also unacceptable. Further, it is also appropriate to note that an advocate is conferred with a senior designation under Section 16 of the Advocates Act, 1961 not only for his expertise and experience in a field of law, but also while considering his professional ethics and whether he would be deserving of such distinction. It goes without saying that a designated Senior Counsel is expected to lead the younger members of the bar by

¹ (2011) 6 SCC 86

example. However, it appears that we are now at the cusp of an age where the Senior officers of this Court are setting precedent that the wheels of justice can be bogged down by misbehavior. Therefore, the incident before this Court sends out a message that there is an alarming need to relook at the existing process for conferring a Senior Designation.

16. Adverting to the issue at hand, and the contentions urged by the learned Senior Counsel appearing on behalf of respondent Nos.4 and 5 as to the *locus* of the petitioner to maintain the present Writ Petition, it is to be noted that both the Greater Hyderabad Municipal Corporation Act, 1955 and TS-bPASS Act, 2020 empower any citizen to make a complaint with regard to the unauthorized and illegal construction.

17. Having regard to the provisions of Greater Hyderabad Municipal Corporation Act, 1955 as well as TS-bPASS Act, 2020, this Court *vide* order dated 31-10-2023 in W.P. No.2430 of 2023 had noted that in order to maintain a Writ Petition against the unauthorized and illegal construction, a person need not be an affected party.

18. Further, it is also to be noted that Section 115 (26) of the Greater Hyderabad Municipal Corporation Act, 1955 and Section 10 (6) of the TS-bPASS Act, 2020 encourages a citizen to bring to the notice of the authorities of the unauthorized and illegal constructions for the authorities to take action there against while protecting their identity and also providing a reward for intimating the authorities. Therefore, the claim of the unofficial respondents of the petitioner not having *locus* to maintain the present petition is liable to be rejected and it is accordingly rejected.

19. Thus, the only defense that would be available to the unofficial respondent would be to seek dismissal of the writ petition by showing that the construction was made by obtaining permission from the respondent authorities and that such construction was made in conformity with the sanctioned plan as confirmed by the sanctioning authority; and that as such the writ petition ought to be dismissed with cost.

20. The unofficial respondent except seeking time to file counter did not show to this Court that the construction was

made in conformity to the sanctioned plan and the sanctioning authority had approved the same. On the other hand, the fact of the respondent authority issuing show cause notice and thereunder passing a speaking order would indicate the contrary. For the said reason also the request for grant of time cannot be acceded to, since a swift and stern action is required to be taken against unauthorized and illegal constructions which have become a menace to the concept of planned development. Any indulgence or lethargy shown in dealing with such unauthorized construction would only encourage violators.

21. The Hon'ble Supreme Court in *Shanti Sports Club and Ors. Vs. Union of India (UOI) and Ors*², held that violators of the Town Planning Scheme cannot be granted any relief. The relevant observations are as under:

“52. Before concluding, we consider it necessary to enter a caveat. In all developed countries, great emphasis has been laid on the planned development of cities and urban areas. The object of planned development has been achieved by rigorous enforcement of master plans prepared after careful study of complex issues, scientific research and rationalisation of laws. The people of those countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the master plan etc. They respect the laws enacted by the legislature for regulating

² (2009) 15 SCC 705

planned development of the cities and seldom there is a complaint of violation of master plan etc. in the construction of buildings, residential, institutional or commercial.

In contrast, scenario in the developing countries like ours is substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air- conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator

of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc. - K. Ramdas Shenoy v. Chief Officers, Town Municipal Council, Udipi MANU/SC/0082/1974 : 1974 (2) SCC 506; Dr. G.N. Khajuria v. Delhi Development Authority MANU/SC/0064/1996 : 1995 (5) SCC 762; M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu MANU/SC/0999/1999 : 1999 (6) SCC 464; Friends Colony Development Committee v. State of Orissa MANU/SC/0933/2004 : 2004 (8) SCC 733; M.C. Mehta v. Union of India MANU/SC/8028/2006 : 2006 (3) SCC 399 and S.N. Chandrasekhar v. State of Karnataka MANU/SC/8005/2006 : 2006 (3) SCC 208.

53. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. **It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.**”

(Emphasis supplied)

22. Further, the Hon’ble Supreme Court in *Esha Ekta Apartments Co-operative Housing Society Ltd. and Ors. Vs. Municipal Corporation of Mumbai and Ors*³, held that

³ (2013) 5 SCC 357

Constitutional Courts ought not to exercise their equitable jurisdiction to regularize illegal and unauthorized constructions.

The relevant observations are as under:

*“45. In view of the above discussion, we hold that the Petitioners in the transferred case have failed to make out a case for directing the Respondents to regularize the construction made in violation of the sanctioned plan. Rather, the ratio of the above- noted judgments and, in particular, Royal Paradise Hotel (P) Ltd. v. State of Haryana and Ors. (supra) is clearly attracted in the present case. **We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.**”*

(emphasis supplied)

23. Insofar as the claim of the petitioner of inaction on the part of respondent authorities in initiating action on the basis of the complaint made on 28-02-2024 is concerned, since the official respondents have now informed this Court of the authorities acting upon the complaint made by the petitioner, firstly by issuing show cause notice dated 23-02-2024 and thereafter passing a speaking order on 10-04-2024 whereby the construction made by the unofficial respondents is held to be unauthorized construction in deviation of sanctioned plan, this Court is of the view that the respondent authorities should be

directed to take further action for enforcing the aforesaid speaking order in terms of Section 24(2) of the TS-bPASS Act, 2020 and the Greater Hyderabad Municipal Corporation Act, 1955 in an expeditious manner.

24. However, while taking action for enforcement of the speaking order, the respondent authorities shall have a regard to the limitation prescribed under the aforesaid enactments.

25. Subject to above directions, the Writ Petition is disposed of.
No costs.

26. It is needless to state that this Court has not expressed any opinion on the merits of the matter.

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

T. VINOD KUMAR, J

Date: 23.04.2024
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