

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.A.No.33 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. G.Vidyasagar, learned Senior Counsel for the appellant; Mr. Jandhyala Ravi Shankar, learned Senior Counsel for respondent No.1-writ petitioner; Ms.B.Lakshmi Kanakavalli, learned Assistant Government Pleader for Municipal Administration and Urban Development for respondent No.2; and Mr. M.Dhananjay Reddy, learned Standing Counsel for Greater Hyderabad Municipal Corporation (GHMC) representing respondents No.3 to 6.

2. This appeal is directed against the order dated 13.12.2022 passed by the learned Single Judge allowing W.P.No.9505 of 2019 filed by respondent No.1 as the writ petitioner.

3. We may mention that appellant was not a party to W.P.No.9505 of 2019. On leave being granted, the appeal has been taken on board.

4. Respondent No.1 had filed the related writ petition taking exception to the notice dated 28.11.2018 issued by GHMC authorities declining to grant building permission to respondent No.1 in respect of plot No.124 (southern side) situated in Survey No.1007 of Baghameeri Village, Kukatpalli Mandal in Medchal District (briefly 'the subject land' hereinafter).

5. It was contended before the learned Single Judge that the impugned notice was issued on the ground that there are several court cases involving Survey No.1007; mere pendency of court cases cannot be a ground for declining building permission; all that GHMC is required to look at is *prima facie* title and possession.

6. However, learned Standing Counsel for GHMC had submitted before the learned Single Judge that the subject land is entangled in several pending litigations for which GHMC had to issue the shortfall notice.

7. Referring to and relying upon a decision of this Court in **Hyderabad Potteries Private Limited v. Collector, Hyderabad**

District¹, learned Single Judge took the view that the impugned notice did not mention the pending litigations. It was a vague notice. Accordingly, GHMC was directed to consider the application of respondent No.1 seeking building permission. Consequently, the notice dated 28.11.2018 was set aside.

8. From the above, it appears that GHMC did not file counter-affidavit in WP.No.9505 of 2009.

9. Learned Senior Counsel for the appellant submits that the subject land was the subject matter of Civil Appeal No.10128 of 2018 before the Supreme Court (**M/s.Prime Properties v. M/s.Bhagya Nagar Plot Owners Welfare Association**); a *prima facie* view was taken that the partnership firm (considered in the appeal) was not the owner of the subject property; Supreme Court directed the parties to maintain *status quo*.

9. In the civil appeal, arising out of S.L.P.(C) No.6464 of 2022 (**M/s Prime Properties v. Sana Lakshmi Devi**), Supreme Court noted that there are altogether four suits between the contesting

¹ 2001(3) ALD 600

parties being O.S.Nos.588, 589, 590 and 591 of 2022 pending before the Additional Senior Civil Judge, Medchal-Malkajgiri District at Kukatpalli. Therefore, the civil court has been directed to proceed with the above suits in accordance with law and to conclude the same at the earliest preferably before 31.03.2023.

10. Learned Senior Counsel representing respondent No.1/writ petitioner has raised several contentions touching on the merit of the rival claims. However, in appellate proceedings, we are not inclined to enter into the merit or otherwise of such rival claims. Nonetheless we are of the view that appellant was a necessary party to the dispute and ought to have been made a party in W.P.No.9505 of 2019. Absence of the appellant in the said proceeding and failure to give an opportunity to the appellant to present its case has vitiated the order dated 13.12.2022.

11. We therefore, set aside the order dated 13.12.2022 and remand the matter back to the learned Single Judge having roster to deal with the same in accordance with law.

12. We make it clear that we have not expressed any opinion on merit. All contentions are kept open.

13. Writ Appeal is disposed of. No costs.

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

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 09.01.2023
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