

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

WRIT PETITION NOs 13500 & 20603 of 2023

WP No.13500 of 2023

Between:

Komuravelli Laxmi Narsaiah and three others

...Petitioners

AND

1. The State of Telangana and, rep. by Principal Secretary for Panchayat Raj Department, Secretariat, Hyderabad and seven others

...Respondents

WP No.20603 of 2023

Between:

Adepu Devi

...Petitioner

AND

1. The State of Telangana and, rep. by Principal Secretary for Panchayat Raj Department, Secretariat, Hyderabad and four others

...Respondents

COMMON ORDER PRONOUNCED ON: 27.03.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

+WRIT PETITION NO.13500 OF 2023

%Dated 27.03.2023

Komuravelli Laxmi Narsaiah and three others

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+WRIT PETITION NO.20603 of 2023

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1. \$ The State of Telangana and, rep. by Principal Secretary for Panchayat Raj Department, Secretariat, Hyderabad and four others

...Respondents

! Counsel for Petitioners in **WP No. 13500 of 2023** : Sri Srinivas Reddy Balkisti
! Counsel for Petitioner in **WP No. 20603 of 2023** : Sri Y.Vijaya Bhakar Reddy
^ Counsel for Respondents : Govt. Pleader for Panchayath Raj and Rural Development
Standing Counsel for the Gram Panchayath

< GIST :

> HEAD NOTE :

? Cass referred :

1. (2013) 5 SCC 336
2. (2021) 10 SCC
3. 2023 (6) ALT 217 (DB)

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION Nos.13500 and 20603 of 2023

COMMON ORDER:

1. The subject property involved in both these writ petitions is one and the same and therefore they are taken up for hearing together and a common order is being passed.

2. Heard Sri Balakisti Srinivas Reddy, learned Counsel for the petitioners in W.P.No.13500 of 2023, Smt.Vineela, learned Counsel representing Sri Y.Vijaya Bhasker Reddy, learned Counsel for the petitioner in Writ Petition No.20603 of 2023, learned Government Pleader for Panchayat Raj and the learned Standing Counsel for Gram Panchayath appearing for the official-respondents in both the writ petitions.

3. For the sake of convenience, the facts in W.P.No.13500 of 2023 are taken as leading case and the

parties hereinafter are referred to as arrayed in this Writ Petition.

4. The petitioners are questioning the inaction of the respondent Nos.2 to 5 in not stopping the illegal construction being carried out by the unofficial respondent No.8 and to direct the official respondents to demolish the same.

5. After receiving the notices in W.P.No.13500 of 2023, the respondent No.8 filed W.P.No.20603 of 2023 questioning the Notice dated 05.05.2023 issued by the respondent Nos.4 and 5 therein, wherein it was directed the respondent No.8 to remove/demolish the house constructed in the subject plot.

Submissions of the learned Counsel for the petitioners in W.P.No.13500 of 2023

6. The learned Counsel for the petitioners would submit that petitioners and the respondent No.6 have jointly

inherited a house site admeasuring 176 Sq.Yards i.e. H.No.1-5-5/5 (new) : 5-5 (Old) from their father, who died intestate, situated at Doulatabad village and Mandal of Siddipet District. Subsequently when the petitioners demanded for partition of the house site and house property, the respondent No.6 denied and behind back of the petitioners, the respondent No.6 created a gift settlement deed in favour of his son/respondent No.7, who in turn created a sale deed in favour of the respondent No.8.

7. The learned Counsel for the petitioners further submitted that in the month of March, 2023 when the respondent No.8 was cleaning the house site No.1-5-5/5 with an intention to take up construction work, the petitioners filed a suit against the respondent Nos.3 to 8 along with others in O.S.No.89 of 2023 on the file of I-Additional Junior Civil Judge, Gajwel, for partition and also sought the reliefs to declare the gift settlement deed

executed in favour the respondent No.7 and subsequent sale deed executed in favour of the respondent No.8 as null and void. The Trial Court granted interim orders of *status quo* against the respondent No. 6 and 8 herein in I.A.No.124 of 2023 in O.S.No.89 of 2023 on 24.01.2023. In spite of there being *status quo* order, the respondent No.8 took up the construction activity and therefore the petitioners filed a representation to the official-respondent Nos.2 to 5 on 31.03.2023 with a request to stop the construction work being made by the respondent No.8. Again the petitioners made a representation to the District Collector on 08.05.2023 and then the District Collector directed the respondent No.4/MPDO not to allow the illegal construction by the respondent No.8, even then the respondent Nos.4 and 5 did not stop the respondent No.8 from illegal construction.

8. The learned Counsel for the petitioners further submits that the petitioners got issued a legal notice to

the respondent No.8 calling upon her to stop the illegal construction, which is in violation of *status quo* orders passed by the Trial Court in I.A.No.124 of 2023 in O.S.No.89 of 2023. Even after receiving the said legal notice, the respondent No.8 did not stop the construction work and further expedited the construction activity. Thereafter the petitioners filed interlocutory application seeking Police protection and also to punish the respondent No.8 for willful violation and disobedience of the Court order dated 24.03.2023 passed in I.A.No.124 of 2023 in O.S.No.89 of 2023. The respondent No.8 filed counter affidavit in I.A.No.124 of 2023 in O.S.No.89 of 2023 on 28.04.2023 in which she clearly admitted that no permission was granted to her for the construction of house and suppressing the said facts filed W.P.No.20603 of 2023 and obtained interim orders from this Court and completed the construction. The construction made by the respondent No.8 is liable to be demolished and

requested the Court to direct the official-respondents to remove the illegal structures raised in the subject plot by the respondent No.8 and requested to allow the Writ Petition.

Submissions of the learned Counsel for the petitioner in W.P.No.20603 of 2023

9. The learned Counsel submits that the respondent No.8/petitioner in W.P.No.20603 of 2023 has purchased the subject plot, admeasuring 203.5 Sq.Yards situated at Daulatabad village and Mandal of Siddipet District from Samudrala Manikanta and his father Samudrala Srisalam vide Sale Deed No.7587 of 2022 dated 23.08.2022. The respondent No.5 has accorded permission in favour of the vendors of the petitioner vide Proc.No.47/2020/GP/DBD dated 05.10.2020 for construction of the house in the subject plot. After purchasing the subject house plot, the petitioner started construction of residential building as per the permission granted by the respondent No.5.

While the construction was being done, the respondent No. 5 issued impugned Notice on 05.05.2023 threatening her to demolish the house. The respondent No.5 is not authorized under any provision of law to carry out such demolition work, that too without issuing any prior notice to the petitioner and requested to allow the writ petition by setting aside the impugned notice.

Submissions of the learned Standing Counsel for the Gram Panchayath

10. The learned Standing Counsel for respondent No.5/Gram Panchayat submits that basing on the documents i.e. registered Gift Deed, accorded construction permission to the respondent No.7 vide Proc.No.47/2020/GP/DBD dated 05.10.2020 for an extent of 156.36 Sq.Yards, to be completed within twenty four months therefrom. Since the respondent No.7 has not started any construction within the stipulated time, the permission was automatically lapsed.

11. The learned Standing Counsel for the respondent No.5 further submits that the construction activity being carried out by the respondent No.8 is illegal and therefore they issued notices to the respondent No.8 on 02.04.2023, 04.04.2023, 29.04.2023 and on 05.05.2023, but the respondent No.8 continued the construction work during the night times and holidays without disclosing the earlier notices filed Writ Petition against only 4th Notice and requested to pass appropriate orders.

12. The respondent Nos.6 to 8 did not choose to file counter in W.P.No.13500 of 2023 to deny the averments made by the Writ Petitioner and the respondent No.8 filed W.P.No.20603 of 2023 without impleading the petitioners herein.

Findings of the Court

13. After hearing both sides and on perusing the record, this Court is of the considered view that when the

respondent No.8 started construction, the petitioners have filed a suit against respondent Nos.3 to 8 along with others in O.S.No.89 of 2023 on the file of I-Additional Junior Civil Judge, Gajwel for partition and also to declare the gift settlement deed and subsequent sale deed as null and void. The Trial Court granted interim orders on 24.03.2023 directing the respondent Nos. 6 and 8 herein to maintain *status quo* in I.A.No.124 of 2023 in O.S.No.89 of 2023. In spite of there being *status quo* order, the respondent No.8 continued the construction activity in the subject house site.

14. The contention of the respondent No.8 is that without issuing any notice to her, the official respondents have issued notice on 05.05.2023 to demolish the house constructed on the subject property.

15. The respondent No.8 without impleading the petitioners filed writ petition No.20603 of 2023. The

respondent No.8 before filing Writ Petition received *status quo* orders passed in I.A.No.124 of 2023 in O.S.No.89 of 2023 filed by the petitioners and she also received legal notice on 11.04.2023 and filed counter in I.A.No.124 of 2023 in O.S.No.89 of 2023 on 28.04.2023. In para No.15 of the said counter, the respondent No.8 categorically stated that after purchasing the suit schedule property, she applied for permission in her name and the same is pending. But, the said facts were not brought to the notice of this Court by the respondent No.8 in the Writ Affidavit filed on 01.08.2023 and this Court passed the interim order in W.P.No.20603 of 2023 on 01.08.2023, which reads as follows:

“*Status quo* as on today shall be maintained with regard to structures laying on the subject property until further orders”

16. In spite of the said *status quo* orders, the respondent No.8 continued the construction on the subject plot and

completed as per the submissions of the learned Counsel for the petitioners. Moreover, the respondent No.8 suppressed the fact that she received notices on 01.04.2023, 10.04.2023, 29.04.2023 and the same was revealed after filing the counter by the respondent No.5, the respondent No.8 not denied her signatures in the notices filed along with the counter. The respondent No.8 questioned only one notice dated 05.05.2023 received from the Gram Panchayath stating that for the first time she received notice, which clearly shows that the respondent No.8 suppressing all the above facts, obtained *status quo* order from this Court in W.P.No.20603 of 2023 on 01.08.2023.

17. The respondent No.8 suppressed the fact that in spite of *status quo* orders against her in I.A.No.124 of 2023 in O.S.No.89 of 2023 on the file of Principal Junior Civil Judge, Gajwel and after filing the counter in the said Interlocutory Application, filed W.P.No.20603 of 2023 and

without bringing the said facts to the notice of this Court obtained interims orders and continued construction and now completed construction, which amounts to misleading the Court and made illegal construction. This Court time and again held that the illegal and unauthorized constructions have to be dealt with strictly to ensure compliance with rule of law.

18. The Hon'ble Supreme Court in ***Dipak Kumar Mukherjee Vs. Kolkatta Municipal Corporation***¹ held that the unauthorized constructions of buildings and other structures not only violate the laws and the common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The relevant portion of the said Judgment is as follows:

¹ (2013) 5 SCC 336

“8. What needs to be emphasized is that illegal and unauthorized constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorizedly constructed multi-storied structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their subservient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short “the Corporation”) have been extremely vigilant and taken steps for

enforcing the provisions of the Calcutta Municipal Corporation Act, 1980 (for short “the 1980 Act”) and the Rules framed thereunder for demolition of illegal construction raised by Respondent 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against 49 illegal and unauthorized constructions and those indulging in such activities will not be spared”.

(Emphasis added)

19. The Hon’ble Supreme Court in ***Supertech Limited Vs. Emerald Court Owners Resident Welfare Association and others***² held that:

“168. Finally, this Court also observed that no case has been made out for directing the municipal corporation to regularize a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held (Esha Ekata Apartments Case ((2013) 5 SCC 357 para 56):

56. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The Courts also expected to refrain from excising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encouraged violators of the planning laws and destroy the very idea and concept of planned development of Urban as well as rural areas:.

(Emphasis added)

² (2021) 10 SCC

20. Following the above two Judgments the Division Bench of this Court in ***P.Venkateswarlu Vs. Government of Andhra Pradesh***³ directed the respondents therein to demolish the illegal constructions.

21. In the instant case, the respondent No.8 without obtaining any valid permission from the competent authority started the construction work and suppressing the said fact before this Court obtained interim orders and on the guise of *status quo* order, continued construction work and completed the same. The said action of the respondent No.8 is to be deprecated and she is liable to be punished with exemplary costs, but this Court restrained to impose costs on the respondent No.8. The construction raised by the respondent No.8 is liable to be demolished and the Writ Petition filed by the respondent No.8 is liable to be dismissed.

³ 2023 (6) ALT 217 (DB)

22. In view of the above findings, Writ Petition No.13500 of 2023 is allowed, directing the respondent Nos.2 to 5 take steps to demolish the illegal construction made by the respondent No.8/petitioner in W.P.No.20603 of 2023, within two (02) months from the date of receipt of copy of this order.

The expenditure incurred for carrying out such demolition work shall be borne by the respondent No.8/petitioner in W.P.No.20603 of 2023.

If the official-respondents faces any difficulty in carrying out the demolition work, they are at liberty to take necessary assistance from the concerned Police.

The concerned Police are directed to provide proper protection to the official respondents while carrying out the demolition work.

23. Consequently, Writ Petition No.20603 of 2023 filed by the respondent No.8 shall stand dismissed as devoid of merits.

24. As a sequel, miscellaneous applications pending, if any, shall stand closed in both the writ petitions.

JUSTICE K.SARATH

Date: 27.03.2024

Note: LR copy to be marked
(By order)

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