

*** THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

+ WRIT PETITION No.16753 of 2023

% Dated 04-04-2024

Between:

Sri Kondam Ram Reddy

... Petitioner

and

\$ The State of Telangana,
Represented by its Principal Secretary,
(Municipal Administration),
Secretariat Buildings, Hyderabad, and others.

....Respondents

! Counsel for the Petitioners : Mr. B.Mayur Reddy

^ Counsel for the respondents : Govt.Pleader for Municipal
Administration

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**W.P. No.16753 of 2023****ORDER:**

This writ petition has been filed seeking a *writ of mandamus* to declare the action of the 2nd respondent in interfering with the construction activity of petitioner's house in an extent of 101.16 square meters (120.99 square yards) in Sy.No.4/D, 5/D, consisting of ground plus one upper floor situated at Nagaram road, Husunabad Municipality and Mandal, Siddipet district vide permission No.197646/HUSN/0208/2022, dated 03.08.2022 and also in violation of the directions of this Court in W.P. No.39530 of 2022 dated 26.10.2022 as illegal, arbitrary and consequently direct the respondent No.2 not to interfere with the construction activity of the petitioner house vide permission dated 03.08.2022 and further declare the notice vide No.UC/04/MCP/W.No.02/2022, dated 07.11.2022 issued under Section 178 & 180 of TSM Act, 2019 as non operative and no validity in view of the directions of this Court in W.P. No.39530 of 2022 dated 26.10.2022.

2. It is the case of the petitioner that he is the owner and possessor of the subject land and he made an application for construction of house and obtained permission on 03.08.2022 from the 2nd respondent for construction of ground plus one upper floor.

3. While so, the 2nd respondent has issued notice dated 07.11.2022 in terms of the order dated 26.10.2022 passed in W.P. No.39530 of 2022 by this Court directing the petitioner to show sufficient cause as to why the unauthorised construction shall not be removed, altered or pull down, within seven days from the date of receipt of the notice, and to stop the work forthwith for which, the petitioner submitted his detailed explanation on 19.11.2022. Without passing any orders on the explanation submitted by the petitioner, the 2nd respondent authorities are interfering with the construction work of the petitioner. Hence, the petitioner filed the present writ petition.

4. The learned Senior Counsel Sri B.Mayur Reddy, appearing on behalf of the learned counsel for the petitioner on record, submitted that the 2nd respondent has revoked the building permission vide letter dated 18.10.2022 without issuing any notice to the petitioner on the ground that the petitioner has submitted the certified copies of registered ownership documents in place of original documents. Challenging the same, the petitioner earlier filed W.P. No.39530 of 2022 and this Court vide order dated 26.10.2022 allowed the said writ petition by setting aside the said revocation orders with a direction to the 2nd respondent to follow the guidelines framed by this Court at paras 12 and 13 in W.P. No.20398 of 2021 and batch on 13.12.2021. In compliance of the order dated 26.10.2022 passed by this Court in W.P. No.39530 of 2022, the 2nd respondent has issued the impugned notice dated 07.11.2022 for which, the petitioner submitted a detailed

explanation on 19.11.2022. Without passing any speaking orders on the said explanation, the 2nd respondent authorities are interfering with the construction work of the petitioner. He would further submit that there was a clear direction from this Court in W.P. No.39530 of 2022 to follow the guidelines/directions issued by this Court in W.P. No.20398 of 2021 and batch dated 13.12.2021 and the sum and substance of the said guidelines/directions are that before passing of revocation order, notice has to be put on to the affected party enabling for raising objections thereby the affected party would have an opportunity to submit explanation to the objections pointed out within the prescribed period. On submission of explanations by the affected party, the respondent authorities are entitled to pass appropriate orders, in accordance with the provisions of TS-bPASS Act and the Rules made thereunder, within a period of one week from the date of receipt of such explanations. In case, if no orders are passed by the respondent authorities, within the time indicated above, there shall be deemed approval of the applications of the petitioners filed for construction of building. However, it was made clear that until passing of orders by the respondent authorities within the time prescribed on the explanations submitted by the affected party, the party shall not proceed with any type of constructions in their respective subject lands.

5. The learned Senior Counsel would further submit that in the instant case, in response to the impugned notice dated 07.11.2022, the petitioner has submitted a detailed explanation on 19.11.2022 and till date the 2nd respondent authorities have not passed any orders thereon, hence, the petitioner in the absence of any orders considered that he was entitled to the deemed provision of building construction permission as per the directions made in W.P. No.20398 of 2021 and batch. As narrated above, since the petitioner's building construction permission is in existence, the interference of the 2nd respondent authorities in construction is nothing but violation of the order of this Court and amount to contempt.

6. Heard the learned Senior Counsel and the learned Standing Counsel appearing for the respondents and perused the material made available on record.

7. As per the submissions made by the learned Senior Counsel, the entire case of the petitioner is on interpenetration of deemed approval of building permission as per the observations made in W.P. No.20398 of 2021 that in case, if no orders are passed by the respondent authorities within the time indicated, there shall be deemed approval of the applications of the petitioner/s filed for construction of buildings and that it would be a case of deemed permission. However a Division Bench of this Court in an appeal in W.A. No.798 of 2022 on 08.12.2022, had set aside the guidelines/

directions to the extent of deemed approval of building portion made in W.P. No.20398 of 2021 and batch contained in paragraph 13. For better appreciation, it is essential and necessitated to extract the relevant paras of the order dated 08.12.2022 passed by the Division Bench of this Court in W.A. No.798 of 2022, which reads as under:

“7. Learned Single Judge was justified in holding that before cancellation or revocation of building permission once granted, it is essential that the authorities follow the principles of natural justice by giving due notice of hearing to the affected parties. However, the further direction of learned Single Judge in paragraph 13 that GHMC authorities would pass appropriate orders after receiving the objection and the explanation thereto within one week from the date of receipt of such explanation and if no orders are passed by the GHMC authorities within the aforesaid period, there shall be deemed approval of the application for construction of building is problematic. Further learned Single Judge clarified that till such orders are passed by the respondent authorities, the permission holders should not proceed with any type of constructions on the subject land. This is contradictory to the earlier direction of the learned Single Judge that if no decision is taken by the GHMC authorities within one week of receipt of explanation, it will be a case of deemed approval.

8. We are unable to subscribe to such views expressed by the learned Single Judge. While certainly the GHMC authorities are required to follow a fair procedure while dealing with the objection to building permission granted and after hearing the concerned stake holders, should pass appropriate orders in accordance with law.

But to say that if no decision is taken by the GHMC authorities within one week of receipt of explanation from the permission holder to the objection, it would be construed that there is deemed approval to the application of the permission holder for construction of building is unwarranted. This is because such a direction is susceptible to misuse at the hands of unscrupulous persons in collusion with certain erring officials of GHMC. Such a possibility cannot be ruled out altogether. It is the duty of the Court to ensure that due procedure is followed while taking a decision which is adverse to a party. Beyond that Court should ordinarily be reluctant to issue positive directions, such as, in the event of non-passing of order by the municipal authorities, it would be a case of deemed permission. This would amount to re-writing of the statute which is neither contemplated nor permissible.

9. That being the position, we are of the view that the portion of the direction of the learned Single Judge dated 13.12.2021 passed in Writ Petition No.20398 of 2021 and batch relating to deemed approval is liable to be interfered with.

10. We are conscious of the fact that order dated 13.12.2021 is not under challenge before us. Nonetheless this order is the fulcrum of the order dated 10.11.2022 which is under appeal before us. By incorporation it has become a part of the order dated 10.11.2022.

11. In any case, no party can claim any vested right in having deemed approval of building permission.

12. Consequently, that portion of the order dated 13.12.2021 passed in W.P.No.20398 of 2021 and batch

contained in paragraph 13 thereof to the extent of deemed approval of building permission is set aside.

8. In view of the above, the submissions made by the learned Senior Counsel do not find any merit. However, since the explanation dated 19.11.2022, stated to have been submitted by the petitioner in response to the impugned notice dated 07.11.2022 is pending, this Court deems it fit and proper to direct the 2nd respondent to consider and pass appropriate orders, in accordance with law, within a period of one week, from the date of receipt of a copy of this order, if already not passed, and thereafter, the 2nd respondent authorities shall initiate appropriate action, in accordance with law.

9. Accordingly, this writ petition is disposed of. There shall be no order as to costs.

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

JUSTICE N.V. SHRAVAN KUMAR

Date: 04.04.2024
LSK