

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

**WRIT PETITION Nos.27607, 27608, 27609, 27610, 27612 &
27614 OF 2022**

COMMON JUDGMENT:

Heard Sri N. Sai Phanindra Kumar, learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development and Sri N. Ranga Reddy, learned standing counsel for the respondents 2 and 3.

2. With the consent of the learned counsels for the parties, writ petition is being disposed of finally, at this stage.

3. The present writ petition is filed with the following reliefs:

“Hon’ble Court may be pleased to pass an order or orders or direction more particularly one in the nature of a writ of mandamus declaring that the action of the 3rd respondent herein in taking steps to demolish petitioners’ premises by demarcating the same, without considering the reply dated 11.08.2022 submitted by the petitioners herein to the notices issued by the Municipal authorities as arbitrary, illegal, contrary to the order dated 05.06.2000, passed by the erstwhile High Court of Andhra Pradesh in W.P.Nos.5263, 5150, 5949 and 5652 of 1999.”

4. Learned counsel for the petitioners submits that the petitioners’ ancestors filed regular O.S.No.70 of 1966 for permanent injunction restraining the same Municipality from interfering with any portion of the building described in the schedule annexed to the plaint or alternatively, otherwise interfering with the future construction, which was decreed by the court of the District Munisfi, Gunthakal on 23.01.1967, which attained finality.

5. The operative portion of the decree reads as under:

“That the defendant municipality be and is hereby restrained from removing the deviations i.e., the stair case, opening of excess

windows, leaving of passage etc., by way of permanent injunction that the defendant-municipality be and the same also is hereby prevented by means of a permanent injunction from stopping the further construction of the building if it (construction) is going to be done in accordance with the approved plans; and that the defendant-municipality do pay plaintiff the sum of Rs.79 and do be its own of Rs.264,67 being the costs of the suit....”

6. Learned counsel for the petitioners further submits that the Municipality, issued some notices in the year 1999, with respect to the same subject matter and challenging those notices Writ Petition Nos.5267,5150,5949 and 5652 of 1999 were filed which were disposed of by this Court by a common order dated 05.06.2000, by setting aside the notices impugned in those writ petitions, with further direction to the 3rd respondent-the Commissioner, Guntakal Municipality to give a fresh notice clearly brining out the alleged contraventions and encroachment of the petitioners giving two weeks time for making representation and on such representation being made to consider the same in accordance with law and pass necessary orders based on the material produced by the petitioners and till such action was taken the order of status quo as on that date was granted. Pursuant to the order/judgment dated 05.06.2000, the Municipality issued fresh notice dated 08.12.2000 but any final order was not passed. The matter was kept pending for about twenty two years and on 30.07.2022 another notice dated 30.07.2022 was issued to the petitioner mentioning the details of the alleged encroachment and calling for the objections within fifteen days of receipt of the notice.

8. The petitioners submitted the reply/explanation dated 11.08.2022 to the notice dated 30.07.2022 *inter alia* submitting that the construction on the ground floor and the first floor were raised in the year 2014 after getting permission and during the course of construction notice was issued on 19.04.1965 and 20.04.1965 on the same subject matter, upon which O.S.No.70 of

1966 was filed against the Municipal Authorities which was decreed on 23.01.1967 which attained finality and was binding on the Municipal Authority, but inspite thereof the authority was trying to interfere and demolish the drainage etc, alleging as an encroachment though nearly two feet of the petitioners' place had already been taken. It was further submitted in the explanation that similar notice could not be issued again which was in violation of the principles of natural justice. The petitioners while submitting the copy of the decree along with their reply, further requested for some time to file copy of the judgment which they had applied but could not obtain in the meantime.

9. The 3rd respondent has passed the impugned order dated 20.08.2022 rejecting the explanation and has proceeded for demolition pursuant to the notice dated 30.07.2022 and the order dated 20.08.2022.

10. The main submission of the learned counsel for the petitioners is that the subject matter of the notice dated 30.07.2022 is covered under the decree of the suit in O.S.No.70 of 1966 which attained finality between the parties, and if sufficient time was granted to them to submit the copy of the judgment, it could have been easily ascertained by the respondents that the subject matter of the suit as also the notice was the same but time was not granted and hurriedly order was passed stating that the petitioners failed to submit such documentary evidences and as such the reply deserved no consideration.

11. Learned counsel for the petitioners further submits that though the notice mentions that the alleged encroachments were examined according to the records of the Town Surveyor and has been recognized as encroachment and marks were placed on the

building but copy of any such record was not given to the petitioners nor any such exercise was done in their presence.

12. Sri N. Ranga Reddy, learned standing counsel for the respondent 2 and 3, on the basis of instructions received submits that the subject matter of the suit is different which is with respect to the building whereas the subject matter of the notice dated 30.07.2022 is different which is the encroachment made over the public drain and the constructions raised over the public place.

13. He further submits that the encroachment over the public drain has already been removed prior to the petitioners approaching this Court, however the rest of the encroachment/construction has not yet been removed.

14. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

15. From the submissions advanced by the learned counsels for the parties as also from perusal of the record, the main dispute appears to be, as to whether the property sought to be demolished as encroachment/unauthorised is the same as was involved in O.S.No.70 of 1966 or not. This is disputed question of fact which at the first instance, cannot be determined by this Court in the exercise of writ jurisdiction and required due determination by the respondent authorities in the light of the explanation submitted by the petitioners.

16. The court is of the considered view that once the petitioner requested for some time to file the copy of the judgment of O.S.No.70 of 1966, of which decree had already been filed along with the explanation, the respondent authority ought to have granted a reasonable time for filing copy of the judgment and on consideration thereof, after being satisfied that the property was

different than the suit property with respect to which there was decree of permanent injunction in favour of the petitioners and against the Municipality, they ought to have proceeded further.

17. The above would have been inconsonance with the principles of natural justice as also it could have avoided likelihood of any violation of the court's decree. When for the last twenty two years, the authorities did not take any step to finalize the matter even after the order passed by this Court on 05.06.2000 in W.P.No.5263 OF 1999 and batch, the authorities in all reasonableness would have granted a reasonable time to the petitioners to file copy of the judgment etc. as was requested in their explanation.

18. The interest of justice would be met if the writ petition is disposed of directing the 3rd respondent to pass fresh order pursuant to the notice dated 30.07.2022, after considering the petitioners' explanation dated 11.08.2022 as also the copy of the judgment in O.S.No.70 of 1966, which the petitioners undertake to file before the 3rd respondent within four weeks from today, and such other documents as they want to file in support of their explanation, within the same period. The copy of the relevant extract of the records of the Town Surveyor recognizing the subject matter of the notice as encroachment, be also given to the petitioners within two weeks from today, against which if the petitioners want to file some reply the same may also be done within four weeks from today.

19. The fresh order shall be passed by the 3rd respondent within a period of three months from today, in accordance with law, after providing opportunity of hearing to the parties concerned.

20. Any further demolition shall not take place and the order dated 20.08.2022 shall remain in abeyance for a period of three months or till passing of the fresh orders by the 3rd respondent,

whichever is earlier. The final order to be passed shall supersede the order dated 20.08.2022.

21. If the petitioners fail to file the documents as mentioned/ requested or the reply within the time stipulated, it would be open for the 3rd respondent to pass fresh orders even in the absence of those documents or the reply, within the period specified above but according to law.

22. The petitioners shall also not encroach upon the public drainage nor shall obstruct its course nor raise any other construction over the same.

23. With the above directions, all the writ petitions are disposed of finally. No order as to costs.

Consequently, the Miscellaneous Petitions if any pending in this writ petition shall stand closed.

RAVI NATH TILHARI,J

Date:29.08.2022

Note:

Issue CC by 02.09.2022.

B/o.

Gk.

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**57**

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DATE: 29.08.2022

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