Andhra High Court
T.S. Devakaranamma And Another vs State Of Andhra Pradesh And Others on 3 April, 2000
Equivalent citations: 2000 (3) ALD 407
Bench: B Swamy
ORDER

1. The subject matter of these writ petitions being the same, they can be disposed of by a common order.

2. The first writ petition i.e., WP No.16179 of 1999 is filed questioning the Notice No.10 dated 16-6-1999 and endorsement G8/13299 of 1999 dated 21-6-1999 wherein the request of the petitioners for construction of a puccabuilding in an extent of 1020 sq.yards in Sy.No.97/2 in premises Bearing No.2-9-456 of Vaddepally village, Hanmakonda Mandal, Warangal District was negatived on the ground that the proposed construction is affecting that master plan of the year 1971 wherein a road was proposed to be laid over the land in question. It is further stated in the above notice that the unauthorised constructions that are proposed to be made by the petitioners affecting the master plan will be viewed seriously and the required proceedings under Law will be initiated for prevention and removal of structure (not covered under the decree) which will affect the master plan. It is the contention of the petitioners that the respondents cannot high handedly take possession of their land without following the due procedure of law i.e., pulling the provisions of Land Acquisition Act in motion. Subsequently, the Vice-Chairman, Kakatiya Urban Development Authority, Warangal issued show-cause Notice No.Cl/808/PP dated 7-9-1999 to show-cause as to why the construction made by the petitioners over the land in question unauthorisedly shall not be demolished. Having submitted the explanation, apprehending that the Vice-Chairman, Kakatiya Urban Development Authority, Warangal may pass final orders directing demolition of the construction, WP No. 19616 of 1999 is filed by contending that as the respondents failed to pass any orders within the time stipulated, it is deemed that the building plan was approved by the respondents and they cannot resort to any demolition on the ground that it is an unauthorised construction.

3. It should be noticed that while the 1st petitioner is a retired Teacher, her husband i.e., 2nd petitioner is an Ex-Military personnel and they are expected to know the law of the land and they cannot plead ignorance of law. Now, let me examine to what extent theyhave complied with the legal provisions of the Municipal Corporation Act and the Rules made thereunder before commencement of construction by invoking the deeming clause.

4. The factual back ground that led to the filing of the two writ petitions is that the petitioners having purchased the land in question as an agricultural site in the year 1981 filed an application under Section 428 of the Hyderabad Municipal Corporation Act which is made applicable to Warangal Municipal Corporation also, seeking approval of the building plan proposed to be constructed by them and having not received any reply from the respondents, erected a tin shed and the same was given Municipal No.2-9-456 and assessed 10 tax and they are paying the taxes regularly. On 10-3-1986, the Municipal Corporation served a notice of demolition by contending that the construction made by the 1st petitioner was unauthorised. Then she filed OS No.256 of 1986

on the file of II Additional District Munsif, Warangal seeking permanent injunction restraining the respondents and their servants from demolishing the construction made by her on the suit schedule land. Though the respondents filed their written statement opposing the relief sought for by her, for the reasons best known to the Counsel appearing for the Municipal Corporation of Warangal, he did not chose to adduce any evidence either oral or documentary in support of their contention, which normally happens in such type of cases as is noticed by this Court for over a number of years. The learned Munsif, relying on the oral testimony of the 1st petitioner that she filed the application with the required fee of Rs.415/- for regularisation of the compound wall and another amount of Rs.540/- for regularisation of the suit house and on the basis of the tax receipts issued by the Corporation decreed the suit without verifying the fact as to whether the 1st petitioner filed the application in proper form and whether she can go on with construction in the suit schedule land as it was purchased as an agricultural land. This is a very sorry state of affairs in the State as far as the building construction activity is concerned, whether it is a small house or a sky-scrapper, for the simple reason that the corrupt officials and the Counsels who are expected to protect the interests of the Corporations have miserably failed in their duties. It is also unfortunate that the Corporation failed to canvas the correctness of the judgment by filing an appeal, because of which the judgment and the decree have become final.

5. Having got the moral booster under the judgment and the decree, in legalising the illegal construction, the 1st petitioner again filed another application on 7-6-1999 seeking approval for construction of a two floored building. It is not in dispute that this application is not followed by a challan in proof of payment of the required fees for obtaining the building permission as required under the Municipal Corporation Building Bye Laws of 1981. Though the Corporation by its proceedings dated 21-6-1999 rejected the proposal it was actually communicated to the petitioner only on 19-7-1999. The petitioners, having received the order, filed the first writ petition questioning its legality by contending that the land belonging to the petitioners cannot be taken possession by the Corporation without following the due procedure of law. As far as this contention is concerned, the petitioners have to succeed in the writ petition. Chapter V of the Municipal Corporation Act deals with acquisition of immovable property by the Corporation. Under Section 146 it is open to the Municipal Corporation to acquire any immovable property for any public purpose by paying compensation through negotiations and in the event of failure of the negotiations,the Corporation has to initiate proceedings under the Land Acquisition Act as per Section 147 of the Act. Hence, there cannot be any difficulty in holding that the Corporation cannot high handedly take possession of the land belonging to the petitioners without following the procedure prescribed either under Section 146 or under Section 147 of the Act and as such a direction is given to the Corporation that if the Corporation feels that the land in question is required for laying road as per the master plan, they have to acquire the land as per the provisions of the Act i.e., either under Section 146 or under Section 147 of the Municipal Corporation Act.

6. At this stage, the learned Counsel for the petitioners vehemently contended that in the master plan said to have been prepared in the year 1971 no road was proposed across the land in question and it is only to victimise the petitioners that such a stand was taken by the authorities now.

7. Sitting in the extraordinary jurisdiction under Article 226 of the Constitution of India, I cannot go into the merits of the contention except holding that if the land of the petitioners is acquired, the Corporation will adequately compensate them. Hence, the petitioners cannot make out any grievance on the ground that the action of the Corporation is vindictive and intended to harm the petitioners. Hence, I do not find any substance in the contention and accordingly it is rejected.

8. Accordingly, WP No. 16179 of 1999 is allowed to the extent indicated above.

WP No. 19616 of 1999:

9. This writ petition is filed questioning the show-cause notice dated 7-9-1999 issued by Kakatiya Urban Development Authority wherein the petitioners were asked to submit explanation as to why the unauthorised constructions made by them on the land in question should not be demolished.

10. While admitting the writ petition by the order dated 20-9-1999, I directed interim stay of demolition until further orders. It was also made clear that the petitioners shall not make any further construction. On 11-10-1999 when the matter came up for further hearing, the Counsel appearing for the Corporation brought to my notice that the petitioners are going ahead with the construction. In those circumstances, I directed the Commissioner, Municipal Corporation of Warangal to visit the place and get a panchanama prepared in the presence of the petitioners with regard to the physical features of the construction apart from serving an order on the petitioners not to make any further construction. Pursuant to the said order, the Commissioner visited the site and got a panchanama drafted on 26-10-1999 and filed the same into this Court. As per the panchanama, it is seen that while a tin shed was constructed on the South-Western side pursuant to the judgment and decree of the civil Court a two floored pucca building is constructed on the South-Eastern side and the roof for the two floors was already laid.

11. Now, the contention of the petitioners is that as the authorities failed to pass any orders on their application within 30 days as required under Section 438 of the Municipal Corporation Act, it should be deemed that the they have approved the building plan and therefore they are entitled to start the construction. Hence, the respondents cannot find fault with the petitioners in making these constructions.

12. It is to be noticed here that the petitioners sent application for approval of the building plan without paying the building tee on 7-6-1999 and therefore the same cannot be considered, by any stretch of imagination, to be a legally valid one. The petitioners Counsel strenuously contended that as per the practice the Corporation is expected to intimate the petitioners the required building fee that has to be paid on the basis of the building plan submitted by them.

13. I cannot accept his contention for the simple reason that under Bye-law No.5 of the Municipal Corporation Act, no application can be filed without the challan in proof of payment of the building fee and if any such application is filed, it is not valid in law and the same is liable to be rejected. Hence, I hold that the application said to have been filed by the petitioners is not in accordance with the provisions of the Act and the Bye-Laws of the Corporation. Secondly, it is the specific case of the

petitioners that they tried to give application in person to the respondent, but the respondents were refusing to receive the same. Hence, they were forced to send the application by Registered post.

14. Without going into the aspect as to whether the petitioners tried to submit the application in person or not, I may mention here that the application sent by the petitioners was received by the Corporation on 15-6-1999 and though the Corporation passed an order that the proposed building is in contravention of the master plan on 21-6-1999, for the reasons best known to the Corporation, it was served on the petitioners only on 19-7-1999. Under Section 440 of the Act, any person proposing to make a construction shall not make such construction unless he gives a notice of his intention to start the construction after the period prescribed for passing the orders under Section 438 expires and he waits for 7 days to commence the proposed construction after the expiry of the period prescribed under Section 438 of the Act. The same position is reiterated in Bye-law No.6(3). In other words, in the event the respondents fail to pass any orders on the application tiled by the petitioners, the petitioners have to give a notice of their intention to start the construction and they have to wait for 7 days before they commence the construction after giving the notice. Admittedly, in this case, the petitioners have not given any such notice to the respondents before making the constructions and therefore, the constructions that have been made by the petitioners are in clear violation of the statutory provisions of the Act and the Rules made thereunder. Further, even according to the petitioners, some bad blood is flowing between them and the Corporation officials. In such an event, any prudent person would take recourse to the law by initiating appropriate proceedings before taking the law into his own hands, which the petitioners have not done. Hence, I have no hesitation to hold firstly, that the application filed by the petitioners is not a valid application as they failed to pay the requisite building fee along with the application and secondly, that the petitioners cannot take shelter under the deeming provision without complying with the provisions of Section 440 of the Corporation Act, coupled with Bye-Law No.6 (3) of the Bye-Laws, and that the petitioners having succeeded in their first attempt in raising the unauthorised construction under the cover of the orders of the Court, have embarked upon this plan wantonly and intentionally knowing fully well that the Corporation is not likely to approve their building plan, perhaps, by managing the officials of the Corporation in not getting the order dated 21-6-1999 served on them till 19-7-1999 and thereafter having received me said order, the petitioners filed the first writ petition. The mala fide intention on the part of the petitioners is very much evident from the fact that they filed the writ petition questioning the show-cause notice dated 7-6-1999 on 14-9-1999 having filed their explanation and without waiting for the final orders to be passed on their explanation. The time has now come that all the citizens should be made known that nobody can violate the Law of the land and even if they do, they have to reap the consequences of their illegal acts. This writ petition can also be dismissed on the sole ground that it is a premature one as the same is filed even before the final orders are passed on the show-cause notice and prevented the respondents from passing final orders. Even on merits, I am not inclined to give the relief sought for by the petitioners in the light of the view taken by me supra. However, as no final orders are passed on the show-cause notice, I direct the respondents to consider the explanation given by the petitioners in the light of the view expressed by me supra. If the petition schedule land is required for a public purpose and the respondents are putting the law of Land Acquisition in motion for awarding the compensation to the petitioners, they shall not take into consideration the illegal constructions made by the petitioners for awarding the compensation. In the event that the

Corporation is convinced that there is no need for acquiring the petition schedule land, as the petitioners have made the constructions to a major extent, the possibility of regularising the unauthorised constructions may be considered. This situation will arise only after taking a decision as to whether the land in question is required for a public purpose or not. When once if the Corporation comes to the conclusion that it is required for the public purpose i.e., laying the road over this land which was shown in the master plan of the year 1971, it is open to the authorities to acquire the same. The respondents are directed to pass appropriate order within two months and communicate the same to the petitioner by Registered Post to the petitioner. Till the final orders are passed, the petitioners shall not make any further constructions. Accordingly, this writ petition is dismissed.

15. In the result, WPNo.16179 of 1999 is allowed to the extent indicated above and WP No. 19616 of 1999 is dismissed with costs. Advocate fee is fixed at Rs.5000/-.