

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND TWELVE
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.6019 of 2003

BETWEEN

Y. Jhansi Lakshmi.

... PETITIONER

AND

The Additional Commissioner, Municipal Corporation of Hyderabad and
another.

...RESPONDENTS

Counsel for the Petitioner: MR. V. RAMCHANDER GOUD

**Counsel for the Respondents: SMT. A. DEEPTHI
(SC FOR GHMC)**

**The Court made the following:
ORDER:**

Heard the learned counsel for the petitioner and the learned standing
counsel for the respondent – corporation.

2. Petitioner has been agitating the issue relating to the building
permission having been denied to his house bearing No.12-5-48/4 situated at
Bathkammakunta, Secunderabad. It appears that petitioner's application for
reconstruction of the said house was rejected more than once. The writ
petition itself is filed questioning the initial rejection and subsequently, on

reconsideration, the proposal was again rejected on 28.11.2011. The same has been the subject matter of this writ petition. During the earlier hearing of this writ petition, one of the learned Judges of this Court issued direction dated 07.07.2009 as follows:

“It is represented by the learned Standing Counsel appearing for the respondents that the respondents are prepared to consider the request of the petitioners for grant of the building permit.

In that view of the matter list the Writ Petition after six weeks under the caption ‘for orders.’

In the meanwhile the petitioner is permitted to approach the respondents and submit the necessary plans for approval if not already submitted.”

3. In compliance with the said direction, petitioner’s proposal has again been reconsidered by the respondent – Corporation but was rejected by the proceedings dated 19.01.2012 on the following grounds:

“1. The site under reference is in violation of U/S 388 of the HMC Act, 1955 and as per the Layout Rules of 1965 under 10(4) minimum 12’-0” passage is required.

2. You are showing the access which is the part of mandatory open space of 15’-0” towards North side of Saraswathi Apartment and the existing apartment mandatory open space cannot be converted as a passage since it will affect undivided share of residents of existing Saraswathi Apartment.”

4. Though the subsequent rejection, aforesaid, pending the writ petition has not been specifically questioned, both the learned counsel addressed arguments on the entire matter by filing number of documents.

5. Learned counsel for the petitioner has produced a set of documents showing the Will of the original owner, agreement of sale and sale deeds relating to the flats constructed at the said apartment complex described as Saraswati Apartment.

6. Learned counsel for the respondent corporation has produced sanction

plan under which the said apartment is constructed.

7. Learned counsel for the petitioner has vehemently contended that the land on which the said apartment is constructed as well as the house property of the petitioner, situated behind the said apartment, were owned by a common owner and while developing the apartment complex, the common passage, which leads to the house of the petitioner, was specifically mentioned in all the title and link documents. He also submits that though the sale deed shows 10'-0" wide passage, all the link documents, relating to the said apartment complex, show 15'-0" wide passage, which is common for the apartment as well as the house of the petitioner.

8. To substantiate the aforesaid contentions, the learned counsel for the petitioner has filed all the documents, as referred to above. However, keeping in view the scope of the jurisdiction of this Court, adjudication into several questions of fact may not be germane and

I am of the view that it would be proper for the Commissioner, Municipal Corporation of Hyderabad, to reconsider the said title and link documents relating to the said apartment with a view to satisfy himself that the passage/access claimed by the petitioner is factually 15'-0" wide and is common for the apartment as well as the house of the petitioner by examining the documents, which the petitioner has produced before this Court.

9. In order to enable the Commissioner to reexamine the matter from the aforesaid aspect, the petitioner is permitted to file a detailed representation together with all the documents on which he seeks to place reliance and substantiate his claim, if necessary, by requesting an opportunity of personal hearing before the Commissioner. On such representation, the Commissioner shall examine the matter and pass appropriate orders on the petitioner's proposal for reconstructions of his house. It is needless to point out that under the Hyderabad Municipal Corporation Act, 1955, the

Commissioner is entitled to take a, *prima facie*, view and adjudicate upon the building permission and as such, the said view of the Commissioner shall be confined only for the purpose of considering the building application and the Commissioner shall be at liberty to take assistance of or give notice to the flat owners of Saraswati apartment, if he feels necessary.

The petitioner shall file the aforesaid suitable representation within a period of one week from today and the Commissioner shall and consider and pass appropriate orders within a period of four (4) weeks thereafter.

The writ petition is accordingly allowed setting the aside the impugned order and remitting the matter back to the Commissioner for fresh consideration. The miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

December 28, 2012
DSK