

image Developers Pvt. Ltd., Hyd. Vs. N. Subhash

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Court : Andhra Pradesh

Decided On : Jun-26-2000

Reported in : 2000(4)ALD354; 2000(4)ALT241

Judge : P. Venkatarama Reddi and;S.R. Nayak, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 43, Rule 1 - Order 39, Rules 1 and 2

Appeal No. : LPA Nos. 85, 86 and 87 of 2000

Appellant : image Developers Pvt. Ltd., Hyd.

Respondent : N. Subhash

Advocate for Def. : Mr. S.R. Ashok for;Mr. R. Raghavacharyulu, Adv.

Advocate for Pet/Ap. : Mr. B.V.S. Sivarama Prasad, Adv.

Judgement :

ORDER

P. Venkatarama Reddi, J

1. Aggrieved by the following direction given by the learned single Judge while disposing of the Contempt Case Nos.1435, 1503 and 1507 of 1999, these Letters Patent Appeals are filed by the respondent in the Contempt Cases:

'...this Court feels it just and expedient to direct the plaintiff company to restore the same position which was prevailing in the property in dispute (i.e., commercial complex) as on the date of passing the status quo order by the trial Court'.

2. The said direction was given on the premise that the appellant herein had violated the status quo order passed by the trial Court which was affirmed in appeal by this Court. As the learned Judge was of the view that such violation was not willful or deliberate, but on account of misunderstanding of the interim order, the appellant was absolved of the charge of contempt. At the same time, the above direction was given purportedly to preserve and effectuate the status quo order. It is the contention of the appellant that the learned single Judge outstepped his jurisdiction in granting such direction and that the fundamental assumption underlying such direction is factually and legally unsupportable.

3. For resolving the controversy, it is necessary to narrate the background in which the status quo order came to be passed. It appears that the family members of the Managing Director of the appellant company and the respondents herein who are related to each other purchased 9924 square yards of land situate in Yellareddyguda and Panjagutta areas of Hyderabad city in the year 1992 and 1993. The respondents entered into what are known as 'Development Agreements' on 24-11-1993 with the plaintiff Company for developing the site by way of construction of multi-storied commercial/residential complex. Pursuant thereto, the respondents executed deeds in favour of the Managing Director of the appellant Company nominating the latter as their lawful attorney to do various acts such as taking possession of the property, filing applications before the Municipal Corporation and other authorities for getting the necessary sanctions, to enter into agreements of sale, to hand over the possession of the constructed areas to the third parties in terms of the Development Agreement etc. It is the contention of the appellant that the respondents received the consideration representing the value of the land. However, the respondents deny the same and contend that the amount initially deposited in Bank was returned. Obviously, the disputes arose between the parties after the construction started. There is some dispute on the question whether one of the respondents was also associated with and expended money on the construction since the beginning, but it is not

necessary to dilate on that controversy. On 30-11-1997, the respondents purported to cancel the Powers of Attorney by executing the deeds of cancellation. This led to the filing of the three suits against the three respondents herein by the appellant company represented by the Managing Director. The relief sought for in the suits is to declare the deeds of cancellation of powers of attorney as invalid and not binding on the plaintiff. 'A' schedule consists of three items which are vacant lands owned by each of the respondents situate in Panjagutta and Yellareddyguda localities. 'B' schedule gives the description of the cancellation deeds dated 30-7-1997. A consequential injunction restraining the defendants from interfering in any manner with the operations under the Development Agreements was also prayed for.

4. In the written statement, the respondent inter alia took the stand that the Development Agreements did not culminate into concluded contracts inasmuch as the plaintiff did not act on them and pay the consideration promised and therefore the powers of attorney became inoperative. It is also averred that the construction was stopped in December, 1995 itself and no further construction was taken up thereafter.

5. The appellant filed interlocutory applications viz., IA Nos 3100 of 1998 etc., seeking temporary injunction restraining the respondents from interfering in the development and sale of 'A' schedule property as per the Development Agreement and the GPAs. The respondents-defendants also filed the IAs., 321 of 1999, 3202 of 1998 and 3110 of 1998 in OS Nos 2082, 2081 and 2083 of 1997 respectively praying for temporary injunction restraining the plaintiff from proceeding with further construction on the suit schedule property. In the schedule appended to the petition, the details of vacant sites referred to in suit 'A' schedule are set out. As already noted, these are the sites purchased by the respondents in the year 1992 or so and in relation to which Development Agreements were entered into. In all the IAs., filed by the plaintiff as well as the defendants, the learned first Senior Civil Judge, by an order dated 10-6-1999 directed both the parties to maintain the status quo till the disposal of the suit and to get ready for trial by the next date of hearing.

6. Both the appellant plaintiff and the respondents-defendants filed CMAs., questioning the status quo orders passed in the relevants IAs. As many as ten appeals were filed under Order XLIII Rule 1, CPC. The learned single Judge of this Court upheld the status quo orders on the grounds of prima facie case and balance of convenience. It appears that against the orders in CMA Nos.1466 and 1709 of 1999 arising out of the status quo orders of the trial Court in IA No.3105 of 1998 in which the plaintiff sought for injunction and IA No.321 of 1999 in which the defendant sought for injunction, the appellant herein filed SLPs., in the Supreme Court. The SLPs., were dismissed as withdrawn on 3-12-1999 with liberty to approach the trial Court for expeditious hearing. In the meanwhile, the respondents herein filed three contempt cases alleging violation of the orders of the High Court dated 17-8-1999 passed in CMA Nos.1777, 1792 and 1707 of 1999. In other words, the respondents herein alleged violation of the status quo orders passed by the trial Court and affirmed by the High Court. The three CMAs., referred to above arise of the status quo orders passed in IA No.321 of 1999 in OS No.2082 of 1997, IA No.3102 of 1998 in OS No.2081 of 1997 and IA No.3109 of 1998 in OS No.2083 of 1997 respectively. The first two IAs., were filed by the defendants and third IA was filed by the plaintiff.

7. In the affidavit filed in the contempt petitions, the petitioner alleged violation of the status quo order on three grounds: (1) Plaintiff proceeded with the construction activity and completed the basement portion on the northeastern side of the skeletal shell of the building on Yellareddyguda land and the plaintiff was still proceeding with the construction. (2) The plaintiff set up the business under the name and style of 'image Fun Times' on the finished basement portion; and (3) The plaintiff inducted Bata company showroom on the northeastern side of the ground floor by finishing the construction on the bare skeletal ground structure. The appellant (respondent in the contempt cases) took the stand that the status quo shall be confined only to the suit schedule property which belonged to the defendants and not the entire property including the land held by the Managing Director of the plaintiff company and his group. The appellant contended that the petitioner in the contempt case was not concerned with the northeastern portion which belongs to one Sitarathnamma, The induction of Bata showroom on the northeastern corner has nothing to do with the lis and the petitioners cannot raise any dispute with

respect thereto.

8. In the course of hearing of the contempt case, it does not appear that any arguments were advanced on the first two grounds of violation. The only violation which seems to have been highlighted and which was taken note of by the learned single Judge is the third one viz., letting out part of the northeastern portion to Bata Showroom. This fact is crystal clear from the second para of page 3 of the common Judgment in the contempt cases. That is the only violation which loomed large before the learned single Judge. The only aspect discussed by the learned single Judge was whether the status quo order should extend over the entire extent of 9924 square yards, site which belonged to the plaintiffs group as well as the defendant's group or it should be confined only to the 'A' schedule sites belonging to the defendants. The learned Judge observed that 'the suit schedule properties become an integral part of the entire commercial complex and therefore the status quo order granted in respect of any portion of the said commercial complex shall be treated as having been granted in respect of the entire complex'. The learned Judge then came to the conclusion that the status quo order was not understood in a proper perspective by the plaintiff, i.e., in the sense in which it was constructed by the learned Judge. The violation of the status quo order was therefore inferred and the learned Judge gave the direction to restore the property in dispute to the same position in which it was on the date of status quo order granted by the trial Court. As the act of violation was unintentional, the appellant was exonerated of contempt charge.

The question is whether the underlying basis of the impugned order is correct and whether the learned Judge could have legitimately granted the direction to restore the status quo ante (obviously in relation to Bata showroom, though not specifically mentioned in the order) while absolving the appellant of the contempt charge. There can be no doubt that the power to issue appropriate directions to ensure the implementation of the order of judgment and to enforce its obedience, inheres in the Court dealing with the contempt matter. In certain cases, it may not be enough to punish the contemnor for violation of the Court's order. The Court has all the necessary and incidental powers to see to it that the violator does not benefit by his own wrong doing and his contumacious conduct. It may therefore be

necessary at times to put back the parties in the same position in which they would have remained, but for the violation or the Court can issue positive directions to implement the order if the contemnor had failed or neglected to implement the same. Before any such direction is issued, the Court should be satisfied that there was a clear and indefensible violation of the order. In our view, it is totally impermissible for the Court to clear an ambiguity in the order or interpret the order susceptible of two interpretations in its own way and then give directions to the respondents to obey the order. Such direction will be clearly outside the contempt jurisdiction of the Court. Here is a case in which the learned single Judge held that the appellant herein did not intentionally disobey the order, but he misconstrued the order. This very observation gives an indicia that the status quo order is capable of more than one interpretation. That is one aspect. The second and more important aspect is that the learned single Judge failed to consider the precise scope of the status quo order and identify the range of its application without amplifying or refining on it. The learned Judge concentrated only on one aspect, that is to say, whether the status quo order would apply to the entire land including the plaintiffs land or it should be confined only to the suit schedule lands of the defendants. Assuming the learned Judge is right in holding that it extends to the entirety of the land which the parties agreed to develop, the crucial question as to the meaning and implications of the status quo order construed in its plain sense has not been adverted to by the learned single Judge. What does the 'status quo' in the context mean? Does it prohibit the user of the constructed area by the party in effective possession or letting it out to the third parties? On these lines, the learned Judge did not address himself. Let us therefore see whether the act of the appellant plaintiff in letting out a portion of the constructed area to Bata showroom, is plainly and indubitably hit by the status quo order. In order to appreciate this aspect in its proper perspective, it is necessary to have an idea of the scope of IAs., filed in the trial Court in IA No.321 of 1999 and IA No.3102 of 1998 filed by the respondents-defendants, the prayer was to grant injunction restraining the plaintiff from proceeding with further construction on the suit schedule property. In the schedule appended to that petition under Order XXXIX, Rule 1, the extents of land owned by each of them are set out. When a status quo order is granted in the context of such application, it can be reasonably interpreted, in the absence of

specific wording, that the status quo should be maintained as regards the construction -- whether it be on the items of suit schedule sites or on the entire land to which the Development Agreement may extend. That means, either party should not proceed with the construction pending the suit and the construction already made should not be interfered with or undone by either party. When we come to the injunction petition filed in IA No.3109 of 1998 which is the subject matter of LPANo.87 of 2000 (arising out of the CC No.1507 of 1999), the prayer therein is to restrain the defendants from interfering with the development or sale of plaint 'A' shedule property as per the Development Agreement dated 24-11-1993. In this IA also, both parties were directed to maintain the status quo. Reading the prayer in the IA and the order granted by the trail Court together, it would mean that the plaintiff should not proceed further with the development/construction, nor should he effect any sales of the site or the constructed area. A corresponding obligation on the part of the defendants not to undo or interfere with/me development that has already taken place is implicit in this direction. The orders of status quo in all the three IAs., are thus substantially similar and in effect, they suspend the construction activity and place an embargo on the sales to third parties. The fact that the status quo orders were primarily aimed at halting the construction activity by either parties is apparent from the preamble to the order passed by the learned trial Judge in each of the cases. The order begins with the sentence that IA has been filed by the plaintiff for restraining the respondents from interfering with the construction work and IA filed by the defendants is for restraining the plaintiff from proceeding with the construction. prima facie, the status quo order does not cover the aspect relating to utilisation of the already developed property either by the parties themselves or by letting it out to third parties, In the absence of specific words, it would be difficult to extend and amplify the scope of the order to cover those situations as well. In any case, if the intention of the Court was to prohibit any of the parties to let out the portions of constructed area to a third party or to prohibit the parties from running business therein, that intention is not spelt out in clear terms in the bald status quo order. It would therefore be erroneous to proceed on the premise that the status quo order was all pervasive. The conclusion on the question of violation of the status quo order or for that matter the injunction order cannot flow from a long drawn process

of reasoning or by making a probe into the supposed intentions behind the order. If the order of the Court is not clear enough or is amenable to manifold interpretations, the Court would not be justified in holding that there was violation after placing its own interpretation on the order. We are therefore of the view that the learned single Judge's finding that the appellant by letting out a part of the premises to Bata showroom has violated the status quo order, cannot be sustained. The consequential direction given by the learned Judge does not therefore fall within the legitimate domain of contempt jurisdiction.

here is another angle from which the problem could be viewed. If the appellant plaintiff was found to have forcibly entered into possession of the area constructed by the defendants and let it out to the third party on its own, there could be some scope for the argument that the status quo was disturbed. But there is no finding on the question as to who was in effective possession and who made the constructions. In the absence of such finding, even such possibility is ruled out

Before parting with the case, we are constrained to observe that the entire controversy has arisen on account of an ambiguous status quo order passed without specifying the precise contours of operation of such order. Status quo with respect to what that is conspicuously silent in the order of the trial Court that has been affirmed by this Court. The Courts will be well advised in framing the status quo orders in specific terms by mentioning 'status quo as to possession, status quo as to construction or status quo with regard to enjoyment of property and so on. It is also desirable to give the brief description of property'.

12. In the result, the direction given by the learned single Judge in the contempt cases is set aside and the LPAs., are allowed accordingly costs. However, we make it clear that it is open to the respondents to move the trial Court for appropriate interim orders to safeguard their interests in connection with the transactions entered into by the appellant with the third party-Bata Company or its dealer. The trial of the suit shall be proceeded with expeditiously as already directed.