

Smt. B. Geethanjali Vs. the Government of Andhra Pradesh, Rep. by Secretary, Municipal Administration and Urban Development Department and ors.

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Court : Andhra Pradesh

Decided On : Nov-23-1995

Reported in : 1996(1)ALT662

Judge : Maithili Sharan, J.

Acts : [Constitution of India](#) - Article 226; Urban Development Authority Zoning Regulations, 1981 - Regulations 9.2.3. and 12

Appeal No. : Writ Petition No. 11608 of 1993

Appellant : Smt. B. Geethanjali

Respondent : The Government of Andhra Pradesh, Rep. by Secretary, Municipal Administration and Urban Development

Advocate for Def. : Govt. Pleader for Respondent No. 1 and ;P. Veera Reddy, Adv. for Respondent Nos. 2 and 3 and ;Standing Counsel for M.C.H. for Respondent No. 4

Advocate for Pet/Ap. : K. Pratap Reddy, M. Sai Reddy, P. Vijayabhaskar Reddy and N. Hemanth Reddy, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

Maithili Sharan, J.

1. G.O.Rt.No. 980, M.A., dated 3-7-1992 is questioned in this petition filed by the petitioner for the issuance of Writ, Order or direction, more particularly, one in the nature of a writ of 'Certiorari', calling for the records from the 1st respondent and further to quash the said order, which is alleged to be illegal and without jurisdiction.

2. The brief facts of the case appearing in the affidavit filed by the petitioner may be summarised thus: The petitioner owns a house bearing Municipal No. 6-1-190/9A situated at Hamal Basti, Walker Town, Padmaraonagar, Secunderabad, and the respondents 2 and 3, wife and husband, are residing in the adjoining house bearing Municipal No. 6-1-190/10, Respondents 2 and 3 started a new construction in the premises adjoining the petitioner's premises violating the provisions of Hyderabad Municipal Corporation Act, 1955 and the Building Bye-laws, 1981 made thereunder, and thereby affecting the easementary rights of air, light and privacy of the petitioner. Then the petitioner filed a civil suit O.S.No. 734/93 against the respondents 2 and 3 in the Court of XI Assistant Judge, City Civil Court, Hyderabad at Secunderabad, for permanent injunction restraining them from constructing the said house in those premises. She also filed an application for temporary injunction which was allowed ex parte on 9-7-1993 restraining the respondents from proceeding with any such construction. Meanwhile, the petitioner learnt from the respondents that the alleged G.O.Rt. No. 980, M.A. dated 3-7-1992 had been issued in their favour and only on that basis they were constructing the house on the said premises. Then she got a copy of that order and on its perusal she found that it was an illegal order as the Government had no jurisdiction to issue such an order. Thus, she approached this Court invoking its writ jurisdiction, questioning the legality and propriety of the said G.O. which had been allegedly issued in violation of the Hyderabad Municipal

Corporations Act, 1955, Municipal Corporation Building Bye-laws, 1981 (hereinafter referred to as 'the Bye-laws'), Andhra Pradesh Urban Areas (Development) Act, 1975 (for short 'the Act') and Urban Development Authority Zoning Regulations, 1981 (for short 'the Zoning Regulations').

3. Respondent 2 filed her counter-affidavit admitting the filing of the alleged civil suit by the petitioner against her, but denying the other averments made by her. Her contention, in short, is that for constructing the said house she had preferred a representation to the 1st respondent under Regulation No. 12 of the Zoning Regulations, 1981 praying for relaxation of the Rules and the Regulations in respect of front open space, rear open space and side open space, and the 1st respondent, considering all the facts and circumstances and after calling for a report from the 4th respondent, was pleased to order the relaxation prayed for, vide the impugned G.O. Therefore, according to her, the construction work was done in accordance with the sanctioned plan and the permission obtained from the Government was as per the provisions of the Zoning Regulations, the Act, Bye-laws and the Municipal Corporation Act. It was further contended that factually and legally, the petitioner had no locus standi to file this writ petition. Respondent No. 4 the Municipal Corporation of Hyderabad, also filed its counter-affidavit contending therein that there was no deviation or unauthorised construction of the house by Respondent No. 2, as stated by the petitioner. It further contended that the Government was empowered under the Zoning Regulations, Bye-laws and the Act to issue the Order in question.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondents 2 and 3 and have also carefully gone through the record of the case. None appears for respondents 1 and 4.

5. At the outset, the learned counsel for the respondents 2 and 3 raised a preliminary objection in regard to the maintainability of this petition for the issuance of a writ of 'certiorari' as prayed for by the petitioner. Basing his arguments on a decision of the Supreme Court in Prabodh Verma v. State of Uttar Pradesh, : [1985]1SCR216 he submitted that writ of 'Certiorari' could not be prayed for in this case where the Government order is being questioned, obviously because the

said order has not been issued by any inferior Court, Tribunal or authority so as to bring it under the mischief and ambit of the writ of 'Certiorari'. The Supreme Court in the case cited supra has held as under.

'A writ of certiorari or a writ in the nature of certiorari cannot be issued for declaring an Act or an Ordinance as unconstitutional or void. A writ of certiorari or a writ in the nature of certiorari can only be issued by the Supreme Court under Article 32 of the Constitution and a High Court under Article 226 of the Constitution to direct inferior Courts, tribunals or authorities to transmit to the Court the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same.

Where it is a petitioner's contention that an Act or Ordinance is unconstitutional or void, the proper relief for the petitioner to ask is a declaration to that effect and if it is necessary, or thought necessary to ask for a consequential relief, to ask for a writ of mandamus or a writ in the nature of mandamus or a direction, order or injunction restraining the concerned State and its officers from enforcing or giving effect to the provisions of that Act or Ordinance.'

6. Thus, in the case before the Supreme Court, the constitutionality or otherwise of some Act or Ordinance was in question, and there was no point of the exercise of judicial or quasi-judicial function involved therein. While, in the instant case, the impugned Government Order passed under Regulation No. 12 of the Zoning Regulations made by the Urban Development Authority with the previous approval of the State Government, in exercise of the powers conferred by Sub-section (1) of Section 59 of the Act, was a quasi-judicial order, obviously because the exemptions and relaxations applied for by the respondent No. 2 for the purpose of constructing the building were required to be decided on merits, as enjoined under Regulation No. 12 of the Zoning Regulations. For the sake of convenience, the relevant Regulation No. 12 of the Zoning Regulations may be reproduced as under:

'12. Powers of Government to accord exemptions and relaxations: The Government may, on an application and basing on merits of each case, accord exemptions and relaxation wholly or partially from any of these regulations, subject to the payment of penal amounts to the Government as indicated in the following

table:- xx x x x '.

7. Going through the above Regulation No. 12, it is clear that it derived powers from the Regulations made in the exercise of the powers conferred by the Act and not otherwise. So, any order passed by the Government under Regulation No. 12 could not be said to be an administrative order simpliciter, but, instead, it would have to be termed as a quasi-judicial order because the power of the Government was to be exercised in accordance with the regulations having statutory authority behind them. Besides, the unambiguous language of the said regulation indicates that the application moved under this regulation has got to be decided on merits, meaning thereby, it has to be decided objectively and not merely on the basis of the subjective satisfaction of the Government. When something has to be decided objectively, several other considerations are to be kept in mind and a judicial discretion has to be exercised; there is no place for any arbitrary decision in the matter. Thus, taking this aspect of the matter, I am of the view that since in passing the impugned G.O. the Government was required to exercise quasi-judicial function, a writ of 'Certiorari' would lie in the case.

8. The learned counsel for the respondents 2 and 3 has argued that it could not be termed as a quasi-judicial act on the part of the Government because there were no two parties litigating. I am afraid, in a quasi-judicial proceeding it does not hold good, as in a lis one of the parties may be the statutory authority itself which is vested with the power to adjudicate the dispute. Further, an administrative action is called a judicial action when there is a prayer or requirement to adopt the judicial approach and to comply with the basic requirements of justice. A lis inter-parties is no doubt an essential feature of a judicial function, but, it is not so in the case of a quasi-judicial function. Applying this criteria in the instant case since the impugned G.O. was issued by the Government on the application of respondent No. 2 under Regulation No. 12, the Government was under an obligation to decide it on merits, and that too objectively. Thus, as already observed above, it was a quasi-judicial function. In view of this discussion, I am afraid, the pronouncement of the Supreme Court cited supra, in my humble opinion, has no application to this case, obviously, because no point for the exercise of a judicial or a quasi-judicial function was involved therein.

9. Looking at the matter from another angle, it could, succinctly, be said that the grounds for the issuance of a writ of 'Certiorari' to a judicial or quasi-judicial body are: Want or excess of jurisdiction, violation of procedure or disregard of principles of natural justice, and error of law apparent on the face of the record. Thus, if there is violation of any of these grounds, the writ of 'Certiorari' would lie. The most important component concerning the writ of 'Certiorari' is that the authority concerned must be under a duty to act judicially. The absence of a lis does not ipso facto negative the order being judicial, and in such cases, the authority will be bound to act judicially only if it is required by the statute to do so; the procedure laid down by the Act or the rules made thereunder is the determining factor in this connection. Thus, if the Act, Bye-laws, Rules or Regulations, as in the instant case, provide for giving an opportunity to the party which is to be affected by an order to make a representation, or making some kind of enquiry, the Courts would infer an intention that the authority is under the obligation to act in a judicial manner. If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of lis and throughout it has to consider the question from the point of view of policy and expediency, it could not be said that it is under a duty at any stage to act judicially. An administrative or executive act is that where the subjective opinion or discretion of the authority plays an important role, while the judicial or quasi-judicial act is one where objective facts established upon enquiry play the key role. The judicial character of the duty enjoined upon the authority has to be inferred from the nature of the duty itself, regard being had to the facts and the circumstances of the case. Thus, on the touch stone and with the back drop of this legal position, the preliminary objection raised by respondents 2 and 3, in my opinion, is not tenable.

10. Coming to the facts of the instant case, the contentions raised by the learned counsel for the petitioner are: (1) the impugned G.O. is illegal and without jurisdiction because no opportunity of being heard was given to the petitioner before passing of the said Order, (2) the exemptions and relaxations permitted by the impugned G.O. are not in consonance with the Zoning Regulations provided under Regulation No. 9.2.3 dealing with the exemption to open space and (3) there is violation of Bye-law No. 16 (2) (ii) of the Bye-laws framed in exercise of the power conferred under Section 589 of the Hyderabad Municipal Corporation

Act, 1955. On the contrary, the learned counsel for the respondents 2 and 3 has argued that Regulation No. 12 of the Zoning Regulations, as amended by the Amendment No. 1 dated 29-1-1988, gives wide powers to the Government to accord exemptions and relaxations in regard to the construction of the buildings and Regulation No. 9.2.3 cannot control it; Section (sic. Bye-law) 16 (2) (ii) of the Bye-laws does not apply in this case and therefore the petitioner has no locus standi in this case.

11. Regulation No. 12 of the Zoning Regulations, referred to above, is couched in unambiguous language, and it is amply clear that the power to accord exemptions and relaxations is given to the Government, superseding any of the powers given to the Urban Development Authority in this regard, or to be more precise, the powers of exemption given under Regulation No. 9.2.3 to the Urban Development Authority. As is clear from statement No. 1 of the Zoning Regulations, these regulations have been framed in exercise of the powers conferred by Sub-section (1) of Section 59 of the Act with the prior approval of the Government, and except Regulation No. 12, all the other regulations incorporated in the Zoning Regulations concern the Urban Development Authority: Regulation No. 12 specifically deals with the power of Government to grant exemptions. Since the zoning regulations have been framed with the prior approval of the Government, and Regulation No. 12 specifically empowers the Government itself, hence it goes without saying that if there is any conflict between Regulation No. 12 and the other regulations of the Zoning Regulations, it is the former which would prevail and not the other regulations. Even otherwise, as observed above, the language employed in Regulation No. 12 also indicates so. Thus, it could not be said that the Government had no power to issue the impugned G.O. or for that matter, the impugned G.O. is illegal or without jurisdiction.

12. Again, as is clear from Regulation No. 12 of the Zoning Regulation, in order to claim exemptions and relaxations, an application is required to be given to the Government. In the instant case, the respondent No. 2 gave an application in this regard praying for certain exemptions and relaxations. Government, in turn, secured the opinion of the Municipal Corporation of Hyderabad and, thereafter, after considering the merits of the case, issued the impugned order granting three

exemptions and relaxations referred to therein. The learned counsel for the petitioner submits that the exemptions granted by the impugned G.O. are not in consonance with the Regulation No. 9.2.3 of the Zoning Regulations, because leaving of 11' open space is not permitted therein. This argument does not hold good because looking to the impugned order, it is clear that 11' open space was provided with a balcony projection of 3' and this balcony projection - width of 0.9 metre or 50% of the length of open space is permitted, vide Regulation No. 9.2.3 (iv). Thus, I do not find that there is a violation of regulation No. 9.2.3 in the instance case. Even otherwise, as already observed, since the impugned G.O. was issued under Regulation No. 12 which supersedes any other regulation of the Zoning Regulations, it could not be said that there is any violation in this regard.

13. Regarding Section (sic. Bye-law) 16 (2) (ii) of the Bye-laws, the learned counsel for the petitioner has argued that no construction or alteration which in the opinion of the authority would depreciate the neighbours' properties or cause annoyance to inhabitants in the neighbourhood should be permitted, and since in the instant case, the exemptions and relaxations given for the constructions of the building would cause annoyance to the petitioner, hence they could not be permitted. I am afraid, this argument is also not tenable in view of the fact that the provisions of Section (sic. Bye-law) 16 apply only to certain defined areas provided under Section (sic. Bye-law) 16 (1) and the above considerations referred to in Section (sic. Bye-law) 16 (2) (ii) are required to be kept in view in allowing constructions in those defined areas only, and not in regard to other constructions made anywhere in the Municipal jurisdiction.

14. The next point urged by the learned counsel for the petitioner is that before issuing the impugned order, the Government was bound to give her, or for that matter to the persons of the neighbourhood an opportunity of being heard in this connection because their easementary rights of air, light etc., were being affected. This contention is also not sound because no such requirement is provided thereunder Regulation No. 12 of the Zoning Regulations; it only requires that the Government would consider the merits of the particular case. Considering the merits of the case concerning the constructions to be made within the limits of the Municipal Corporation, it is worth while to note, means and implies that it is the

Municipal Corporation which has got to be consulted so as to reach to any decision. As is clear from the impugned order, the Municipal Corporation was consulted by the Government before issuing the said Order. If at all the easementary rights or otherwise of the neighbours are affected by the impugned G.O., they have every right to go to the Civil Court and challenge it. The writ jurisdiction under Article 226 of the [Constitution of India](#) could not be invoked in regard to the private and personal rights of the individuals. Thus, the petitioner has no locus standi in this case. Undisputedly, the petitioner has already chosen the other forum by filing a civil suit in the Court of XI Assistant Judge, City Civil Court, Hyderabad at Secunderabad, praying for perpetual injunction in this regard.

15. In view of the above discussion, there are no merits in this writ petition, and it is hereby dismissed. No costs.

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