



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE NINETEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
WRIT PETITION NO: 34563 OF 2022

Between:

1. KONATHALA GOVINDARAJULU S/o Late Konathala Appa Rao,
Aged about 57 years, Occ.-Business, D.No.14-21-11, Rythu Sangham
Veedhi, Nidanam Doddi, Anakapalli, Visakhapatnam District.
2. .Konathala Dhana Satyanarayana, S/o Late Konathala Apparao,
Aged about 60 years, Occ.-Business, D.No.14-21-11, Rythu Sangham
Veedhi, Nidanam Doddi, Anakapalli, Visakhapatnam District.

...PETITIONER(S)

AND:

1. THE STATE OF AP Represented by it's Principal Secretary,
Municipal Administration and Urban Development Department,
Secretariat Building, Velagapudi,
Amaravathi, Guntur District.
3. Greater Visakhapatnam Municipal Corporation, Represented by its
Commissioner,
Visakhapatnam, Visakhapatnam District.
4. Visakhapatnam Metropolitan Region Development Authority, (VMRDA),
Represented by its Metropolitan Commissioner, Visakhapatnam,
Visakhapatnam District.
5. Town Planning Officer, Greater Visakhapatnam Municipal Corporation,
Visakhapatnam, Visakhapatnam District.
6. Alapati Marikar, W/o Rama Krishna Rao, Aged about 70 years,
Resident of D.No. 49-54-11/3,HIG-14, Green Park Area, Visakhapatnam.
7. E.Sadguru Infratech, Represented by it's Managing Partner,
Sri Suneel Mahanthy, S/o Sivaprasad Mahanthy,aged about 46 years,
Occ.Business,
Sadguru Towers, PM Palem, Visakhapatnam,
Visakhapatnam District.

...RESPONDENTS

Counsel for the Petitioner(s): T V SRI DEVI

Counsel for the Respondents: GP FOR MUNICIPAL ADMN URBAN DEV

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****WRIT PETITION No.34563 OF 2022**

Between:

Konathala Govindarajulu and another

....Petitioners

Versus

The State of A.P., rep. by its Principal Secretary,

Municipal Administration and Urban Development Department,

Secretariat Building, Amaravati and others

.....Respondents

DATE OF JUDGMENT PRONOUNCED:19.06.2023

SUBMITTED FOR APPROVAL:**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J



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

+ WRIT PETITION No.34563 OF 2022

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....Petitioners

Versus

\$ The State of A.P., rep. by its Principal Secretary,
Municipal Administration and Urban Development Department,
Secretariat Building, Amaravati and others
.....Respondents

! Counsel for the Petitioners: Smt T.V. Sridevi

^ Counsel for the 1st respondent: G.P for Municipal
Administration & Urban
Development Authority.

Counsel for respondents 2 & 3: Sri K. Madhava Reddy,
SC for GVMC

Counsel for 6th respondent: Sri P. Rama Sharan
Sharma.

< Gist :

> Head Note:

? Cases Referred:

¹ 1999(4) ALD 3

² (2005) 9 SCC 262

³ (1972) 3 SCC 684

⁴ (1980) 1 SCC 630

⁵ (1997) 9 SCC 217

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****WRIT PETITION No.34563 OF 2022****JUDGMENT:**

Heard Smt T.V. Sridevi, learned counsel for the petitioners, the learned Government Pleader for Municipal Administration and Urban Development Authority appearing for the 1st respondent, Sri K. Madhava Reddy, learned standing counsel for the respondents 2 and 3-Greater Visakhapatnam Municipal Corporation and Sri P. Rama Sharan Sharma, learned counsel for the 6th respondent.

2. This writ petition under Article 226 of the Constitution of India, has been filed by the petitioners being aggrieved from the grant of building permit order vide permit No.1086/2996/B/Z4/BEM/2020 dated 23.07.2022 by the Greater Visakhapatnam Municipal Corporation (for short, "GVMC")-the 2nd respondent and its authorities in favour of respondent No.5 through G.P.A Holder respondent No.6, for construction of building in an extent of 1500 sq. yards in sy.No.11/4 F, of Butchirajupalem Village, Near Peela Complex, Gopalapatnam, Visakhapatnam, with the prayer to declare the same as illegal, arbitrary and violative of Article 14 of the Constitution of India



and against the principles of natural justice and to direct the 2nd respondent-GVMC to cancel the said building permit order.

3. Briefly stated, the facts of the case are that the petitioners' father late Konathala Appa Rao, along with the petitioners purchased an extent of 1522 sq. yards in sy.No.11/4 and 11/5 of Butchirajupalem Village, Near Peela Complex, Gopalapatnam, Visakhapatnam vide registered sale deeds dated 01.06.1989, 03.06.1989 and 03.06.1989 vide Document No.5349/1989, 5353/1989 & 5354/1989 from Vankayala Sakuntala, w/o. Satyanarayana.

4. The 5th respondent late Alapati Marikar and her husband owner towards the Northern side executed an agreement of sale dated 03.06.1989 to an extent of 1500 sq. yards in same Sy.No.11/4 in favour of the Firm Sri Satyanarayana Films represented by its Managing Partner, Sri K. Appa Rao, the petitioners' father. The vendors after receiving the advance amount, delivered the vacant physical possession of the property under the agreement of sale. The petitioners/their father came in possession and raised a compound wall around total land to an extent of $1552+1500=3052$ sq. yards, and also raised thatched and ACC sheet shed constructions.



5. When the 5th respondent failed to execute the sale deed, the Firm filed O.S.No.93 of 1993, on the file of the Principal Senior Civil Judge, Visakhapatnam, for specific performance of agreement which was decreed on 18.06.2001, directing the 5th respondent to execute the sale deed as also directing the Firm to deposit the balance of the sale consideration which as per the petitioners' case was also deposited. However, the 5th respondent filed appeal in A.S.No.2378 of 2001, before this Court which was allowed, the suit was still decreed on 23.10.2009, but modifying the decree of the trial court, and thereby directing the Firm, to pay a sum of Rs.1,00,000,00/- (one crore) in addition to Rs.3,60,000/- the balance sale consideration, to the 5th respondent and upon receipt thereof the 5th respondent was directed to execute the sale deed, with other consequential directions.

6. The operative part of the judgment dated 23.10.2009 in A.S.No.2378 of 2001 is as under:

“In the result, the judgment and decree in O.S. No.93 of 1993 on the file of the Principal Senior Civil Judge's Court, Visakhapatnam, dated 18-06-2001 are modified by directing the plaintiff either to deposit to the credit of the suit or to pay direct to the defendant Rs.1.00 crore (Rupees one crore only) within two months from today, in addition to Rs.3,60,000/- (Rupees three lakh and sixty thousand



only) payable to the defendant towards the balance of sale consideration under the suit agreement of sale, dated 03-06-1989 and on such deposit or payment, the defendant shall execute and register a sale deed in favour of the plaintiff in respect of the suit schedule property as per the suit agreement of sale, dated 03-06-1989, in default of which, the plaintiff is at liberty to get the sale deed so executed through Court. The plaintiff shall bear the cost of execution and registration in either event and the defendant is at liberty to withdraw Rs.1,03,60,000/- (Rupees one crore three lakh and sixty thousand only) without furnishing any security, if the amount is deposited by the plaintiff to the credit of the suit. The suit is decreed and the appeal is allowed accordingly without costs.”

7. It is the petitioners’ case that the necessary Urban Land Ceiling (ULC) clearance was not obtained by respondent No.5 and the suit property was also notified in the prohibited list under Section 22-A of the Registration (A.P. Amendment) Act of 1999. To the contrary is the case of the respondent No.6 that the urban land ceiling clearance was duly obtained by the 5th respondent’s father himself way back in the year 1989 vide proceedings of the Special Officer, U.L.C, Visakhapatnam in C.C.No.6104/76 to 6111/76.

8. However, it is the case of both the sides that the 6th respondent filed W.P.No.19763 of 2020 for deleting the property in Sy.Nos.11/4F & 11/4F to an extent of 777 sq. yards and 968 sq. yards respectively from the prohibited list under Section 22-



A of the Registration Act. The writ petition was disposed of on 21.02.2022 directing the 4th respondent therein to consider the letter in Rc.No.788/2021/SA dated 06.12.2021 said to be written by the Tahsildar, Gopalapatnam Mandal to the 4th respondent, and also considering the other relevant material, to pass an appropriate order in accordance with the governing law and rules.

9. Pursuant to the order dated 21.02.2022, the Joint Collector and C.A.U.L.C, is said to have written letter dated 29.04.2022 to the District Registrar requesting to adopt de-notification to the list of prohibited properties notified from 22-A(1)(d) of the Registration Act, from Buchirajupalem village of Gopalapatnam Mandal.

10. Learned counsel for the petitioners further submitted that the 6th respondent filed O.S.No.737 of 2018 against the dead person, the petitioners' father. The petitioners filed O.S.No.792 of 2018 for permanent injunction on the file of the Principal Junior Civil Judge, Visakhapatnam and I.A.No.770 of 2018 filed therein was dismissed on 18.03.2020 during COVID-2019 Pandemic. Pending the I.A No.770 of 2018, the 6th respondent filed transfer petition in T.O.P.No.34 of 2020 for transfer of O.S.No.792 of 2018, to be tried along with



O.S.No.737 of 2018, which was allowed on 26.08.2021. Even before dismissal of I.A.No.770 of 2018, the status quo order dated 19.02.2020 was granted in I.A.No.69 of 2020 in O.S.No.737 of 2018, directing specifically the parties not to make any constructions and not to make any alterations to the structures to the suit schedule properties until further orders, and the said order is subsisting.

11. In the meantime, the 6th respondent based on alleged General Power of Attorney (GPA) from the 5th respondent, approached the GVMC authorities for permission to make constructions. The petitioners made representation dated 30.09.2021 objecting to grant of building permission as the matter was subjudice before the civil courts and as the grant of building permission would prejudice the rights of the petitioners.

12. However, the GVMC authorities granted, building permission dated 23.07.2022, without considering the petitioners' objections dated 30.09.2021 and inspite of the order of status quo, despite pendency of the suits, in gross violation of the building laws/Municipal laws.



13. The 2nd respondent has granted permission for an extent of 742.34 sq. meters : 887.83 sq. yards and for the rest area the application is said to be pending.

14. The petitioners submitted another representation dated 13.10.2022 to cancel the building permit order but the same has not been considered and no action has been taken by the GVMC authorities.

15. It is submitted by the learned counsel for the petitioners that the possession of 1500 sq. yards in Sy.No.11/4F continued with the petitioners. The petitioners are paying electricity consumption charges to the A.P.E.P.D.C Limited regularly. The petitioners have also let out the said property to various persons.

16. On the point of possession, learned counsel for the petitioners further submitted that the petitioners are in possession. Finding to that effect has been recorded in A.S.No.2378 of 2001. It is further submitted that if the petitioners could not get the decree executed, then also, as per the procedure contemplated under Section 28 of the Specific Relief Act, there could be recovery of possession from the petitioners and the petitioners cannot be dispossessed contrary



to law. The 5th respondent did not take any step, and consequently the 6th respondent cannot interfere in petitioners' possession by obtaining building permit with respect to the land in possession of the petitioners.

17. It is submitted that the 2nd respondent has got the jurisdiction and is under duty to cancel the building permit order under Section 450 of the Hyderabad Municipal Corporation Act but is not discharging the statutory duty.

18. Learned counsel for the petitioners placed reliance in the cases of **Sweety Builders Pvt. Ltd vs. Municipal Corporation of Hyderabad & others¹**, and **R.V. Ramana Rao and The Peddapalli Municipality, Peddapalli District (W.P.No.19049 of 2020 dated 05.01.2021)**.

19. Sri K. Madhava Reddy, learned standing counsel for GVMC submitted that the civil litigations of rival claims, to possession and title were not in the knowledge of the GVMC. The 5th respondent through the 6th respondent, made online application for building permit order. The approval was granted on 23.07.2022 to an extent of 968 sq. yards in Sy.No.11/4F, but the final approval is dependent upon post verification of

¹ 1999(4) ALD 3



documents and inspection. The Town Planning wing, conducted post verification of documents and also inspected the site and submitted the report, whereupon, he submitted that, as per the report of the Town Planning Officials, the possession was of the respondents 5 and 6, who have entered into the Development Agreement-cum-Irrevocable General Power of Attorney in the year 2019 to raise the constructions. The Commissioner being prima facie satisfied with the ownership rights and the possession, confirmed the building plan on 01.10.2022.

20. Sri K. Madhava Reddy, further submitted that pursuant to the interim order passed in the present writ petition, the Commissioner directed both the parties to maintain status quo till final orders in the writ petition, by endorsement Rc.No.1532/2022/ACP-VIII dated 07.02.2023.

21. Learned counsel for the respondent No.6, submitted that the decree of specific performance has not been executed. The sale deed is not yet executed in favour of the petitioners and they have not yet complied with the decree as modified and the time for compliance has also expired. Consequently, the petitioners have no title to the subject land.



22. He further submitted that the petitioners' father not being in position to pay the amount under the modified decree, himself left the possession. Even as per the physical verification and survey of the land, the possession of the respondent No.5 was reported to the GVMC.

23. Learned counsel for the 6th respondent submitted that in O.S.No.792 of 2018, the petitioners' application for temporary injunction I.A.No.770 of 2018 was rejected on 18.03.2020. Consequently the petitioners cannot claim to be in possession.

24. Consequently, the submission of the learned counsel for the 6th respondent is that the building permit was rightly granted which deserves no interference.

25. Learned counsel for the respondent No.6 placed reliance in the case of **Sura Kumaraswamy vs. State of Telangana (W.A.No.585 of 2022 dated 18.10.2022)**.

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

27. The following point arises for consideration:

“Whether the building permit order dated 23.07.2022 deserves to be set aside”



28. It is an undisputed fact that the decree passed in O.S.A.No.93 of 2001 for specific performance of contract as modified by the appellate court in A.S.No.2378 of 2001 has not yet been complied or put to execution.

29. Section 28 of the Specific Relief Act reads as under:

“Section 28 in The Specific Relief Act, 1963

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree



within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

30. Section 28 of the Specific Relief Act vests powers on the court to rescind a contract even after passing of the decree of a specific performance on specified grounds in the same suit. As per sub section (1), if the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit, in which the decree is made, to have the contract rescinded, and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require. As per sub section (2), where a contract is rescinded under sub-section (1), the court shall direct the purchaser or the lessee, if



he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor under clause (a).

31. In **Kumar Dharendra Mullick and others vs. Tivoli Park Apartments (P) Ltd.**,² the Hon'ble Apex Court referred to its previous judgment reported in **Hungerford Investment Trust Ltd., vs Haridas Mundhra**³, in which it was held that when the court passes the decree for a specific performance, the contract between the parties is not extinguished. The decree for specific performance is in the nature of preliminary decree and the suit is deemed to be pending even after the decree. Hence, the court retains control over the entire matter even after the decree. Since the court retains control over the matter, despite the decree, it is open to the court to order rescission of the agreement, when it is found that the decree-holder is not ready and willing to abide by his obligations under the decree.

32. In **Kumar Dharendra Mullick** (supra), the case of **K. Kalpana Saraswathi vs. P.S.S. Somasundaram Chettiar**⁴, was also referred, in which it was held that it is perfectly open to the

² (2005) 9 SCC 262

³ (1972) 3 SCC 684

⁴ (1980) 1 SCC 630



court in control of a suit for specific performance to extend the time for deposit.

33. The case in **Sazdor Mohar Singh vs. Mansilal**⁵ was also referred in which it was held that [section 28\(1\)](#) of the Specific Relief Act, postulates that the Court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. [Section 28](#) gives power to grant order of rescission of the agreement which itself indicates that till the sale deed is executed, the trial Court retains its power and jurisdiction to deal with the decree of specific performance. It was further held that the Court has the power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, despite the application for rescission of the agreement/decree.

34. It is apt to refer paragraphs 26 to 30 of **Kumar Dhirendra Mullick** (supra) as under:

“26. It would seem to be absurd to hold that the mere fact that a date of completion is fixed in the original decree puts an end to the action and that the control of the original Court expires on the expiration of that date and thus substitute in effect for all the known remedies stated

⁵ (1997) 9 SCC 217



above the simple expedient of treating the action and the decree as dead for all purposes and leaving the vendor in undisturbed possession of property which is not his.

27. In the case of [Hungerford Investment Trust Limited v. Haridas Mundhra & others](#) reported in [(1972) 3 SCC 684] it has been held that when the Court passes the decree for specific performance, the contract between the parties is not extinguished. That the decree for specific performance is in the nature of preliminary decree and the suit is deemed to be pending even after the decree. Hence, the Court retains control over the entire matter even after the decree. Since the Court retains control over the matter, despite the decree, it is open to the Court to order rescission of the agreement, when it is found that the decree holder is not ready and willing to abide by his obligations under the decree.

28. In the case of [M. Sakuntala Devi v. V. Sakuntala & others](#) reported in [AIR 1978 A.P. 337] it has been held that though [section 28](#) does not confer power on the Court to extend time, it recognizes its power to do so in cases of default in payment.

29. In the case of [K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar](#) reported in [AIR 1980 SC 512] it has been held as follows:

"It is perfectly open to the court in control of a suit for specific performance to extend the time for deposit, and this court may do so even now to enable the plaintiff to get the advantage of the agreement to sell in her favour. The disentitling circumstances relied upon by the defendant-respondent are off-set by the false pleas raised in the course of the suit by him and rightly negated. Nor are we convinced that the application for consideration and extension of time cannot be read, as in substance it



is, as a petition for more time to deposit. Even so, specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity. Here, the assignment of the mortgage is not a guileless discharge of the vendor's debt as implied in the agreement to sell but a disingenuous disguise to arm herself with a mortgage decree to swallow up the property in case the specific performance litigation misfires. To sterilize this decree is necessary equity to which the appellant must submit herself before she can enjoy the fruits of specific performance."

30. In the case of [Sardar Mohar Singh v. Mangilal](#) reported in [(1997) 9 SCC 217] it has been held that [section 28\(1\)](#) postulates that the Court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. [Section 28](#) gives power to grant order of rescission of the agreement which itself indicates that till the sale deed is executed, the trial Court retains its power and jurisdiction to deal with the decree of the specific performance. Therefore, the Court has the power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, despite the application for rescission of the agreement/decree."

35. In view of the pronouncement of law in **Kumar Dhirendra Mullick** (supra) by the Hon'ble Apex Court, the decree holder and the judgment debtors both have right to approach the trial court which passed the decree for specific performance of the contract, in terms of the modified decree, by making payments,



seeking extension of time to deposit and execution of the sale deed, as also for the recession of the agreement and consequent thereupon for restoration of possession.

36. It is the specific case of the petitioners that under the agreement of sale, they obtained possession.

37. In O.S.No.93 of 1993, trial court framed issue No.3 as under:

“Whether the plaintiff is in possession of the suit schedule property?”

38. The trial court recorded the finding, as is evident from reading of the appellate judgment dated 23.10.2009 in A.S.No.2378 of 2001, that the plaintiffs established their possession of the suit property.

39. The appellate court in A.S.No.2378 of 2001, also held that the claims of P.W.1 corroborated by watchman P.W.2, supported by the recital in Ex.A.2 agreement of sale and visually presented with Ex.A.3 colour photograph regarding delivery of possession of the suit site to the plaintiff and construction of the compound wall by the plaintiff around the site and consequential possession and enjoyment of the same, cannot be considered to have been not probablised and the absence of any



independent oral evidence or supporting documentary evidence for the defendant and her husband, examined as D.Ws.1 and 2 makes any contradictory claims insufficient to rebut the evidence for the plaintiff in this regard. The routine recital in Ex.B.2 draft sale deed produced in execution to enable obtaining regular sale deed through court about the contingency of delivery of possession at the time of the registration of sale deed, may be an inadvertent inconsistency indulged in by the drafts man and cannot, in any manner, be construed as a conscious admission of absence of possession by the plaintiff”.

40. The learned counsel for the respondent No.6 in regard to possession is, not disputing the petitioners’ possession given under the agreement of sale nor the findings in O.S.No.93 of 1993 and in A.S.No.2378 of 2001 as aforesaid, but his contention is that after the appellate decree, the vendee himself left possession and as such the question of the vendor approaching the court for possession does not arise.

41. Nothing has been brought on record, except the plea, that the vendor (petitioners’ father) left the possession after the appellate decree. Undisputedly any proceeding either under Section 28 of the Specific Relief Act or any other proceeding for recovery of possession was not taken by respondent No.5.



42. So far as the submission based on order dated 18.03.2020 is concerned the order dated 18.03.2020 is on record. A perusal thereof shows that the rejection of I.A.No.770 of 2018 is not on the ground that the petitioners are not in possession, but considering that inspite of the decree for specific performance, the petitioners failed to deposit the amount and to show their readiness and willingness to obtain the registered document. The trial court further observed that “once the petitioners proved the suit for a specific performance, they cannot claim adverse possession against the respondents, may be they are in possession, their possession is not legal and acceptable”.

43. Thus, there is nothing in the order dated 18.03.2020, to support the contention that the petitioners are not in physical possession. Any such finding on possession against the petitioners is not found in the order dated 18.03.2020.

44. So far as the report of the Town Planning wing regarding possession is concerned, there is nothing in the counter affidavits of the respondents to indicate that such survey was conducted with notice to the petitioners or the petitioners were given any opportunity against such report of survey.



Consequently, the submission advanced based on the report to deny petitioners possession is also not acceptable.

45. In view of the finding recorded by the court of Principal Senior Civil Judge, Visakhapatnam in O.S.No.93 of 1993 by judgment and decree dated 18.08.2001 as also in A.S.No.2378 of 2001 of this Court on the point of possession of the petitioners and there being nothing on record to show that after the appellate judgment, the possession was delivered to or taken by the respondents 5 and 6 the submission of the learned counsel for the respondent No.6 on the point of possession contrary to the specific findings recorded by the courts, is not acceptable.

46. Section 450 of the A.P. Municipal Corporation Act provides for the power of the Commissioner to cancel permission. It reads as under:

“450. If at any time after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under section 428 or 433 or in the further information if any, furnished, he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.”



47. In **Sura Kumarawamy** (supra) the Telangana High Court held that Section 450 of the GHMC Act (Same as Section 450 of A.P.M.C. Act) prescribes that at any time after permission to proceed with any building or work has been given, if the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 428 or 433, he is empowered to cancel the building permission.

48. The petitioners application for cancellation of the permission under Section 450 of the A.P. Municipal Corporation Act, 1955, has not been considered.

49. To sum up:

1. The decree for specific performance of contract in O.S.No.93 of 1993 as modified in A.S.No.2378 of 2001, stands in favour of the petitioners and against the 5th respondent.
2. The finding on the issue of possession recorded by the trial court in O.S.No.93 of 1993 is in favour of the petitioners which was affirmed by this Court in A.S.No.2378 of 2001.



3. In view of Section 28 of the Specific Relief Act and the law as laid down in **Kumar Dharendra Mullick** (supra) the parties to the decree can approach the same civil court which granted the decree, to deposit the amount, to extend the time to deposit, to execute the sale deed, and also for recession of the contract and for restoration of possession, as the present is a case of possession delivered to the purchaser under the agreement to sell.
4. Any proceeding for recession of the contract and for direction to the petitioners to restore the possession to the vendor having not been initiated and therebeing nothing on record to show that after the appellate decree, the possession was either delivered to vendor or left by the petitioners' father, it cannot be said that the petitioners are out of possession, simply on the report of the surveyor, which could also not be shown, to be with opportunity to the petitioners.
5. Consequently, the petitioners had the right of opportunity to be given before grant of building



permit order with respect to the property in question in favour of the respondents 5 and 6.

6. It is the admitted case of the G.V.M.C that it had no knowledge of the civil disputes in between the parties and the building permission was granted online.

7. The grant of building permit order, in the aforesaid facts, is by suppression of material facts, affecting the petitioners' right.

50. The building permission was granted without considering the petitioners objection to the grant of the building permission.

51. In **R.V. Ramana Rao** (supra), the Telangana High Court observed that the Municipal authorities were bound to consider the objections filed against granting of the building permission but instead of disposing of the said objections, they chose to ignore the same and granted permission without reference to the objections. Consequently, the building permission granted by the Municipality was held to be bad, arbitrary and against the principles of natural justice and was set aside.

52. **Sweety Builders Pvt Ltd.**, (supra) relied upon by the petitioners counsel, is not on the point as involved herein. In that case the building permission lapsed and notice was given



to demolish the constructions, though the applications for revised plan and conversion of the land use were pending. The court was not inclined to enter into the disputed questions of fact at that stage and directed the matter to be considered by the appropriate authorities pursuant to the representation.

53. It was also submitted by the petitioner's counsel that the 5th respondent died. The GPA executed by the 5th respondent in favour of the 6th respondent extinguished and the 6th respondent cannot obtain any permission from the GVMC authorities for constructions under the guise of GPA.

54. The aforesaid aspect can be considered by the GVMC authorities if and when the occasion so arises.

55. In the result, the writ petition is allowed setting aside the building permission granted to the respondents 5 and 6 vide permit No.1086/2996/B/Z4/BEM/2020 dated 23.07.2022 by the Greater Visakhapatnam Municipal Corporation.

56. It is further directed that if any application is filed for grant of building permit order with respect to the property in question, the GVMC shall provide opportunity of hearing to the petitioners and keeping in view this judgment shall consider any such application.



No order as to costs.

Consequently, the miscellaneous petitions, if any, pending in the petition shall stand closed.

RAVI NATH TILHARI, J

Date:19.06.2023

Note:

L.R copy to be marked.

B/o.
Gk



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.34563 OF 2022

Date: 19.06.2023

Gk