

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 354-355/2020

M/S. ANURADHA FLAT OWNERS ASSOCIATION APPELLANT(S)

VERSUS

M/S. ANURADHA ESTATES RESPONDENT(S)

O R D E R

These appeals are against the judgment(s) and order(s) dated 21.02.2014 and 03.09.2014 passed by the High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh in Second Appeal No.1177 of 2012 and Review S.A.M.P. No.1106 of 2014.

2. The present appeals arise out of a suit for injunction instituted by the respondent, who is a builder/developer and the appellant is the association of flat owners.

3. Shorn of unnecessary details, the relevant facts are as under:

4. A Development Agreement dated 04.06.1991 was executed between the land-owners and the respondent herein to build apartments. The Municipal Corporation

of Hyderabad approved/sanctioned the plan for construction of stilt/ground plus three floors with 12 flats on each of the three floors, totalling 36 apartments. However, the respondent built one additional apartment on each of the floors, totalling to 39 flats, which were subsequently compounded and regularized on payment of usual charges by the respective flat owners. Separate sale deeds were executed sometime in the year 1991, according to which an undivided share of the land was also transferred in favour of the apartment owners.

5. As per the sanctioned plan, a total of 1385 sq.yd. was the covered area and the remaining 848 sq.yd. remained as open common area with the land-owners. The undivided share transferred to each of the flat owners covered the built-up area of 1385 sq.yd.

6. On 05.02.2007, the respondent applied to Greater Hyderabad Municipal Corporation for permission to construct two additional floors. The said request was rejected by the Corporation *vide* communication dated 09.04.2007. The respondent applied for reconsideration of its request, which was again rejected by the Corporation on 06.08.2007.

7. Thereafter, it appears that the respondent wanted to obtain some Structural Stability Certificate for which it had to make inspections by technical team.

The said inspection was objected to by the residents and the members of Association. This gave rise to institution of a suit for injunction by the respondent on 18.08.2009. The reliefs claimed in the said suit read as follows:

“(a) The Defendant, its agents, servants, henchmen, or any person/s claiming through it, may be restrained perpetually from causing any sort of interference or obstruction in the peaceful possession and enjoyment of the plaintiff’s firm, over the schedule property.

(b) Cost of the suit may be awarded; and

(c) pass such other order or orders as this Hon’ble Court may deem fit and proper under the circumstances of case.”

8. The appellant-Association, who were the defendants, filed their written statement.

9. The Trial Court, *vide* judgment dated 15.11.2010, dismissed the suit. The respondent carried the same in appeal before the City Civil Court and the said First Appeal was allowed by the XIV Additional Chief Judge (F.T.C.) *vide* judgment dated 21.01.2011.

10. In the appeal, the argument apparently advanced by the respondent was that, although, it had the liberty to raise additional floors over the terrace, rights over which were retained by the respondent, the appellant-Association was objecting. While allowing the appeal, the Appellate Court apart from decreeing the suit observed that the respondent therein in appeal

(appellant herein) could not make a grievance regarding construction over the terrace by the appellant (respondent herein) after obtaining necessary permission from the Municipality and also that unsold garage space belong to the appellant therein (respondent herein).

11. The operative portion of the judgment of the First Appellate Court dated 25.07.2012, as contained in paragraph 16 thereof, is reproduced as hereunder:

“16. In the result, the appeal is allowed without costs. The Judgment and decree of the lower court is set aside and the suit is decreed. As per the orders of the A.P. State Consumer Disputes Redressal Commission, Hyderabad (Ex.A5) the respondent herein cannot make grievance of the appellant herein making any construction in the terrace after obtaining necessary permission from the municipality and that unsold garage space belonged to the appellant herein. Therefore, the appellant/plaintiff is entitled to perpetuate injunction.”

12. Aggrieved by the same, the appellant-Association preferred a Second Appeal before the High Court, which has since been dismissed by the impugned judgment dated 21.02.2014. Thereafter, the appellant-Association preferred a review before the High Court seeking review of judgment dated 21.02.2014, which was also dismissed by the High Court.

13. Dissatisfied with the same, the appellant-Association challenged the impugned judgment as well as the order passed in review before this Court by way of present appeals.

14. It goes without saying that no construction can be made, firstly, without the permission of the Municipal Corporation and that too after obtaining necessary other permissions as may be required from other stake-holders of the State, secondly, there can be no permission granted in violation of any statute and thirdly, any contract between the respondent and the appellant, which may be contrary to law, cannot over-ride the statutory provisions.

15. There is no dispute on the above propositions by either of the sides.

16. In that view of the matter, we do not deem it necessary to interfere with the impugned judgments. However, we only observe that the respondent would be at liberty to inspect/raise/construct additional floors over the terrace of the existing building provided it gets the necessary permissions not only from the Municipal Corporation but also from other Government Agencies as may be required under the statutes, bye-laws, rules, or regulations applicable.

17. We make it clear that any observations made by the First Appellate Court, High Court, or by this Court will not in any manner affect the authorities in considering or deciding the application for grant of construction.

18. The injunction granted by the First Appellate

Court and as confirmed by the High Court would not, in any manner, interfere with the peaceful use of the passage and the open land by the Members of the flat owners' association.

- 19. The appeals stand disposed of as above.
- 20. There shall be no order as to costs.
- 21. Pending applications, if any, stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI;
SEPTEMBER 14, 2023

ITEM NO.111

COURT NO.11

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 354-355/2020

M/S. ANURADHA FLAT OWNERS ASSOCIATION

Appellant(s)

VERSUS

M/S. ANURADHA ESTATES

Respondent(s)

Date : 14-09-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s) Mr. J. Prabhakar, Sr. Adv.
Mr. Abhijeet Sinha, AOR
Mr. Nandlal Kr. Singh, Adv.
Mr. Sarthak Gaurav, Adv.
Ms. Rimmi Bharadwaj, Adv.

For Respondent(s) Mr. T. V. Ratnam, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals stand disposed of in terms of the
signed order.

Pending applications, if any, stand disposed of.

(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS

(RANJANA SHAILEY)
COURT MASTER

(Signed order is placed on the file.)