

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.18590 of 2014

Dated : 26.08.2015

Between:

Y.Venkateswar Rao
S/o Anjaiah
Aged about 52 years
R/o 32-39-3, Velisalavari Street
Machavaram, Vijayawada
Krishna District

Petitioner

And

Government of Andhra Pradesh
Rep. by its Principal Secretary
Municipal Administration & Urban Development
Secretariat, Hyderabad
And others

.. Respondents

This Court made the following :

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.18590 of 2014

ORDER:

With the consent of the learned counsel for the petitioner, learned Standing Counsel for the Municipal Corporation and the impleaded fourth respondent, this Writ Petition is being disposed of.

2. The petitioner claims to have purchased 50 square yards of house plot in Municipal Ward No.27/3 of Vijayawada and has been living in the said premises for a long time. He is also duly paying municipal taxes. In February 2014, the petitioner claims to have submitted an application for grant of building permission to construct RCC roof residential ground floor in the existing house. According to the petitioner, since no rejection was intimated, deeming that the permission applied by the petitioner was granted, the petitioner commenced construction. According to the learned counsel for the petitioner, construction is completed by now. The fourth respondent complained to the Municipal Corporation against the alleged illegal construction made by the petitioner. Earlier, she has also filed W.P.No.3148 of 2014 alleging inaction by the Municipal Corporation on the complaint given by the petitioner. The said writ petition was disposed of directing the first respondent to initiate action in accordance with law.

3. Since the Municipal Corporation reported to the Court that they are initiating action, the petitioner was served notice under Section 452 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') on 20.06.2014 granting five days time from the date of receipt of the notice to respond to the said notice. Even before expiry of the time granted in the said notice, the Commissioner issued notice under Section 636 of the Act on 23.06.2014 proposing to demolish the alleged illegal construction made. Challenging the same, the present writ petition is filed.

4. This Court by order dated 04.07.2014 stayed the demolition of the

existing construction until further orders. This Court, having noticed that even before the time granted in the notice dated 20.06.2014 expired, the Commissioner issued notice under Section 636 of the Act, calling for explanation from the Commissioner. Having noticed that no explanation as directed by this Court was given by the Commissioner, on 08.07.2015, this Court granted further time of one week to enable the Commissioner to file explanation. Accordingly, the Commissioner filed an affidavit explaining that as per the powers delegated to the City Planner, a notice was issued on the file put up by the Town Planning & Building Overseer (TPBO) and he regrets of issuing such notice even before the expiry of time limit fixed in the 1st notice.

5. Admittedly notice under Section 636 of the Act was issued even before the time granted to the petitioner to respond to the notice on 20.06.2014 expired. Therefore, on that ground itself notice under Section 636 of the Act is liable to be set aside.

6. According to the learned counsel for the petitioner, there are further developments in as much as in pursuant to the scheme formulated by the Government granting penalisation and regularization of the illegal constructions made vide G.O.Ms.No.128 dated 22.06.2015, the petitioner has submitted an application for regularization of the alleged illegal construction made by him and the same is pending with the competent authority. The learned counsel therefore submits that pending consideration of the application, no penal action can be taken by the respondent Municipal Corporation.

7. Learned counsel for the fourth respondent submits that since the illegal construction was made and from the beginning the fourth respondent has been complaining about the position of construction, such regularization application does not arise and moreover the petitioner has to answer the notice issued under Section 452 of the Act. He further submits that in any proceedings pending before the Commissioner he is necessary party and he may be given opportunity of hearing before considering the explanation/application submitted by

the petitioner.

8. Having regard to the above submissions, this Writ Petition is disposed of setting aside the notice issued under Section 636 of the Act dated 23.06.2014 by remitting the matter to the respondent Corporation to the stage of Section 452 notice. As the petitioner has already submitted his explanation; the same shall be considered. The petitioner is also granted liberty to file additional explanation within one week from the date of receipt of this order bringing to the notice the subsequent developments, and it is for the respondent Corporation to consider the explanation and take appropriate decision as warranted by law. The fourth respondent is also entitled to be heard by the Municipal Corporation before acting upon the explanation/representation submitted by the petitioner regarding unauthorized/illegal construction made by the petitioner in the subject premises. The entire exercise shall be completed within a period of four (4) weeks. Until the orders are passed by the respondent Corporation as directed above, the respondent Corporation shall not take any coercive steps against the petitioner, and the petitioner also shall not undertake any further construction. Having regard to the explanation given by the then Commissioner in his affidavit dated 12.08.2015, no further action needs to be taken against the Commissioner insofar making adverse entries in his personal record. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the Writ Petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 26.08.2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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