

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.17295 of 2014

Dated : 08.07.2015

Between:

Aravapalli Raghavendra Kalyan,
S/o.Sambasiva Rao, Aged about 34 yrs,
R/o.5/2, Arundalpet, Guntur-522 002.

.. Petitioner

And

Guntur Municipal Corporation,
Rep., by its Commissioner, Guntur & 2 others.

.. Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.17295 of 2014

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ORDER :

This writ petition is instituted alleging the inaction of the respondent-Corporation in taking action against the illegal and unauthorized constructions being made in D.No.23-6-125/122, Patnam Bazar, Guntur, contrary to the provisions of Hyderabad Municipal Corporation Act, 1955, (for brevity 'the HMC Act') as illegal and arbitrary.

2. At the time of admission, this Court passed interim order directing the respondents 2 and 3 not to make any further construction and also directed the 1st respondent to ensure that respondents 2 and 3, do not make any further construction contrary to the sanctioned plan.

3. Praying to vacate the said interim order, W.V.M.P.No.1962 of 2014 is filed by respondents 2 and 3.

4. In the counter affidavit filed by the 1st respondent, it is averred that building permission was obtained on 11.06.2014. According to the building permission granted only ground and first floor has to be constructed, with setback of 1.00 mts., in front side and 0.50 mts, for two sides and rear. It is further averred that having noticed that the respondents 2 and 3 have constructed cellar floor and deviated from the approved plan, action was initiated and on 28.06.2014, notice was issued under Section 42 (1) & 43(2) of Andhra Pradesh Urban Development Act, 1975 and Section 452 of the HMC Act, directing the respondents 2 and 3 to stop construction and remove the unauthorized construction. It is further averred that as respondents 2 and 3 did not give reply to the said notice, orders were passed directing them to remove the violated portion of building and unauthorized construction of cellar floor. The counter is silent as to the further steps taken in pursuant to the 2nd notice.

5. Learned counsel Sri P.R. Prasad, appearing for respondents 2 and 3, contends that no such notices were served on respondents 2 and 3. The record also does not disclose about the issuance of notices, though in the counter affidavit of 1st respondent claims issuance of such notices. Learned counsel vehemently contends that there were no deviations made by respondents 2 and 3 and that it was the existing building in which cellar was already constructed. Only for the purpose of satisfying the tenant who is a bank, the building permission was applied. The photographs filed along with

the vacate stay petition would show that it is an existing old building. He therefore, contends that the allegation that respondents 2 and 3 are undertaking new construction is not correct.

6. It appears from the material filed by either side that the 1st respondent-Corporation has found some deviations and therefore, notices were issued. As a consequence to the issuance of notices, it is for the respondent-corporation to take further course of action as warranted by law, after giving due opportunity to the erring building owners. Having regard to the specific assertions of respondents 2 and 3, that no notice was served, which is not seriously disputed, the notice issued under Section 452 of the H.M.C Act, be served on the respondents 2 and 3 within a period of one week. All the above contentions on behalf of respondents 2 and 3 can be raised before the 1st respondent-Corporation and it is expected that the competent authority of respondent-Corporation shall consider all such contentions that may be raised by them. They are also entitled for personal hearing. The respondent-Corporation shall complete the enquiry and finalise the issue with regard to the allegation of unauthorized construction, as expeditiously as possible, preferably within a period of eight (8) weeks from the date of receipt of copy of this order. Till the issue is finalized, the interim order passed by this Court shall continue.

7. It is made clear that this Court has not expressed any opinion on merits on the rights and obligations of respondents 2 and 3 and they are preserved. The request of petitioner to conduct inspection of the building shall be considered objectively and appropriate steps be taken before proceeding further.

8. With the above directions, this writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

08th July, 2015.
Rds

P.NAVEEN RAO,J