

**THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

**WRIT PETITION No. 5184 of 2015**

**ORDER:**

Heard learned counsel for the petitioners, learned Government Pleader for Municipal Administration appearing for the 1<sup>st</sup> respondent, Sri A. Panduranga Rao, learned standing counsel for the 2<sup>nd</sup> respondent, and Sri T.C. Krishnan, learned counsel for the 3<sup>rd</sup> respondent, and with their consent, the writ petition is disposed of finally.

2. Alleging illegal constructions made, pursuant to building permission granted, a notice signed on 23.02.2015 was issued calling upon the persons mentioned in the notice to show cause why action should not be taken for excess construction of building than originally permitted. This notice was issued in exercise of power under Section 452 (1) & (2) of the Hyderabad Municipal Corporation Act, 1955 (for short "the Act"). Petitioners challenge this notice on the ground that they were not parties, no notice was given to them, and if any penal action is taken without putting them on notice, grave prejudice would be cause to them, as they purchased flats in the building.

3. Learned counsel for the petitioners contended that in the year 2008 the owners of the building have applied for regularization of minor deviations made during construction of the building, under building penalization scheme, and during pendency of the application for regularization, no penal action can be taken.

4. Sri T.C. Krishnan, learned counsel for the 3<sup>rd</sup> respondent, contended that illegal construction is made

by not disclosing the true and correct facts. The learned counsel submits that the owners of the building wrongly informed the 3<sup>rd</sup> respondent that they have obtained permission for G+4 floors and believing the same as true the 3<sup>rd</sup> respondent purchased Flat No.405 in 4<sup>th</sup> floor. Later on, it came to light that the said floor was not having permission, and therefore, it is an illegal construction. Having come to know of the same, the 3<sup>rd</sup> respondent filed complaints to the 2<sup>nd</sup> respondent and the Lokayuktha. Before the Lokayuktha, the 2<sup>nd</sup> respondent filed a report. In the said report, the 2<sup>nd</sup> respondent clearly admitted the fact that the construction is unauthorized. The learned counsel further contended that when illegal construction is made, the question of regularization would not arise.

5. The learned standing counsel for the 2<sup>nd</sup> respondent submits that in accordance with the direction issued by the Lokayuktha, action is taken by the Competent Authority and there is no illegality in issuing the impugned notice warranting any interference by this Court.

6. The impugned notice is issued in exercise of the power vested in the Commissioner by Section 452 (1) & (2) of the Act. Whenever it comes to the notice of the Commissioner that illegal construction is made without obtaining permission or even though permission is granted, contrary to the permissible area, extra floors are constructed, it is permissible to the competent authority to initiate proceedings to remove such illegal construction made. In exercise of such power, the impugned notice is issued. As power is available to the Commissioner to issue such notice calling for explanation, the same cannot

be challenged before this Court even without filing objections before the authority who caused the notice. All the contentions, which are projected in this writ petition, can as well be adverted to before the authority. Thus, it is premature for this Court to go into the contentions urged by the petitioners. After appropriate orders are passed by the competent authority, if the petitioners are not satisfied with the nature of the orders passed, it is always open to them to avail the appropriate remedy as available in law. Thus, this Court is not inclined to interfere with the impugned order.

7. The petitioners contend that the notice dated 23.02.2015 is not served on them. However, as they have already come to know about the said notice, they can file explanation justifying their stand and praying to drop further proceedings. The petitioners shall file their explanation within two weeks from the date of receipt of a copy of the order. The 3<sup>rd</sup> respondent is also entitled to file his objections before the 2<sup>nd</sup> respondent within two weeks from the date of receipt of a copy of the order. On filing of such explanation/objections respectively, the 2<sup>nd</sup> respondent shall consider the same and pass reasoned orders as warranted by law dealing with all aspects within a further period of three weeks.

With the above observations, the Writ Petition is disposed of. There shall be no order as to costs.

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

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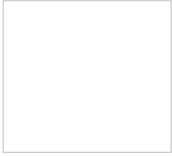
**P. NAVEEN RAO, J**

8<sup>th</sup> October, 2015

Note: Furnish C.C. in a week.

(b/o)

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