

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.10540 of 2015

Date: 13-04-2015

Between:

K. Sirisha

.. Petitioner

AND

The State of Andhra Pradesh, represented by its

Principal Secretary, Municipal Administration

Department, Secretariat, Hyderabad and 3 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.10540 of 2015

ORDER:

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This writ petition is filed for a mandamus declaring the orders passed by the 2nd respondent in U.C.No.02/2015/ACP-V, dated 06-04-2015 as illegal and arbitrary and for a consequential direction to set aside the same.

2. The case of the petitioner is that she is absolute owner of house property bearing D.No.11-1-5/2 admeasuring 116.58 square yards in Survey No.186/3, Sanathnagar, Chinagantyada, Gajuwaka Zone-V, Visakhapatnam having purchased the same under Registered Sale Deed No.292 of 2013 and thereafter, after obtaining building permission from the 2nd respondent, the

petitioner constructed the building strictly in accordance with the approved plan without any deviations. It is stated that in front of his building at the western side a 130" wide road is passing and after construction of the building in the 2014, the 2nd respondent formed an underground drainage through the road margin of the said 130" road. It is further stated that the 2nd respondent issued a notice vide U.C.No.02/2015/ACP-V, dated 06-04-2015 under Sections 405 and 406 of the Hyderabad Municipal Corporation Act, 1955 to the petitioner alleging that he encroached the 130" road by raising ground plus two upper floors thereby causing obstruction for free flow of traffic and also causing obstruction for removing the stilt from drain. Aggrieved by the same, the present writ petition is filed.

3. Heard the learned counsel for the petitioner and Sri S. Lakshminaryana Reddy, learned standing counsel for the respondent Corporation.

4. Learned counsel for the petitioner relied on **M. Rajkumar and others v. The Excise Superintendent, Hyderabad District, Hyderabad and another**, wherein it is held that only in case of eminent threat, the procedure contemplated under Section 405 of the Hyderabad Municipal Corporation Act, 1955 should be invoked and not otherwise and a notice is required to be issued prior to any proceedings to remove the structure.

5. On the other hand, learned standing counsel for the respondent Corporation submits that when there was encroachment of 130" road by the petitioner, the Commissioner issued the impugned notice for removing the same. He further stated that in the decision relied on by the learned counsel for the petitioner, the writ appeals were allowed only on the ground that no notice has been given to the petitioners under Section 406 of the Act.

6. Since the present impugned notice is not preceded by any prior notice and since the petitioner asserted that she has not encroached the road as alleged and also a drainage was laid, in the fitness of things, the present impugned notice dated 06-04-2015 can be treated as show cause notice to the petitioner to which the petitioner can file her explanation.

7. In the above facts and circumstances, the present impugned notice dated 06-04-2015 is treated as show cause notice and the petitioner shall file her

explanation to the said notice, within a period of three (3) weeks from today and on submission of such explanation, the respondent Corporation may consider the same and take appropriate action in accordance with law. In case the petitioner fails to submit her explanation within the said period as ordered, it is open for the respondent Corporation to take appropriate further action as per law. The petitioner can submit her explanation without waiting for a copy of this order. Till such decision is taken by the respondent Corporation, status quo obtaining as on today shall be maintained.

With the above directions, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 13-04-2015

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