

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.39930 of 2015

-
10.12.2015

Between:

Baranikana Nooka Raju

.. Petitioner

and

The State of Andhra Pradesh,
represented by its Principal Secretary,
Municipal Administration and Urban Development Department,
Hyderabad and others

.. Respondents

Counsel for the petitioner: Mr.R.Siva Sai Swaroop

Counsel for respondent No.1: Government Pleader for
Municipal Administration and Urban Development (AP)

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Counsel for respondent Nos.2 and 3: --

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Counsel for respondent No.4: --

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The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to declare the action of respondent Nos.2 and 3 in trying to demolish the petitioner's flat bearing No.FT-3 (4th floor) admeasuring 1050 sq.ft. of Utkal Residency bearing plot No.46 situated at Allipuram Extension ward within the limits of Dwarakanagar Sub-Registrar Office, Visakhapatnam, despite pendency of his application under Building Penalization Scheme (BPS), as illegal and arbitrary.

The petitioner pleaded that in pursuance of the building permission bearing No.BA/10283/05/ACP-II, dated 16.03.2005, his vendor constructed ground plus four floors and that he purchased the aforementioned flat at fourth floor under a registered sale deed, dated 25.11.2015. It is his further pleaded case that as after purchase, he came to know that his vendor had only permission for ground plus three floors, he has applied for regularization of his flat under BPS, 2015. The cause of action for the petitioner to file this writ petition is the alleged threat from respondent Nos.2 and 3 to demolish his flat.

Mr.S.Lakshmi Narayana Reddy, learned standing counsel for the Greater Visakhapatnam Municipal Corporation (GVMC) appearing for respondent Nos.2 and 3, on instructions, submitted that taking advantage of coming into force of BPS in the year 2015, the petitioner purchased a non-existing flat under the aforesaid sale deed and then started constructing the flat; that on coming to know about this fact, respondent No.2 issued notices under Sections 452(1) and 461(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') and that as the petitioner refused to receive the same, the same were affixed at his residence. He has further submitted that on coming to know about the issue of notices, the petitioner has hurriedly made an application under BPS for regularization of the illegal construction on 04.12.2015, evidently to preempt the further action by respondent

Nos.2 and 3 and that so far orders under Sections 452(2) and 636 of the Act have not been passed.

From the facts noted above, it is evident that the flat in question is being constructed in deviation of the sanctioned plan and that so far no orders under Sections 452(2) and 636 of the Act have been passed. It is also evident that the application filed by the petitioner for regularization was received by respondent Nos.2 and 3 and the same is pending.

In the above facts and circumstances of the case, respondent Nos.2 and 3 are directed to dispose of the petitioner's application for regularization of his flat within two weeks from the date of receipt of a copy of this order and depending upon the decision that may be taken thereon, they shall proceed with the further action against the illegal construction of the petitioner. The petitioner shall not raise further construction till a decision on his application for regularization is taken by respondent Nos.2 and 3.

Subject to the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P.No.51553 of 2015 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

10th December, 2015
GHN

