

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

WRIT PETITION No.39374 of 2015

-
04.12.2015

Between:

M/s.Y.Ganapathi Rao & Co., Kakinada

.. 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.Ch.Samson Babu

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

Counsel for respondent Nos.2 and 3: --

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The Court made the following:

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ORDER:

This writ petition is filed feeling aggrieved by the common notice issued by respondent No.2 Corporation under Sections 441, 452, 462 and 636 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act').

A perusal of the record shows that the allegation made against the petitioner is that it has raised constructions over the area earmarked for parking. However, it is case of the petitioner that in the year 2008 itself, it has applied for regularization of the illegal constructions under the Building Regularization Scheme (BRS), which was in force at that time, and that though a formal order of regularization has not been communicated, according to its information, its constructions were regularized. The petitioner has, therefore, assailed the validity of the abovementioned notice.

Mr. Ancha Panduranga Rao, learned standing counsel for the Kakinada Municipal Corporation appearing for respondent Nos. 2 and 3, submitted that an area reserved for parking cannot be regularized and that in the absence of any regularization order, the petitioner's plea that its constructions made over the parking area were regularized cannot be accepted.

A perusal of the impugned notice shows that the same is issued under different provisions, viz., Sections 441, 452, 462 and 636 of the Act. Such a notice combining all the statutory provisions, under which various steps have been contemplated before issuing notice under Section 636 of the Act, ought not to be issued. As a first step, respondent No.2 Corporation has to issue a notice under Sections 452(1) and 461(1) of the Act and after considering the explanation, if any, submitted by the owner of the offending construction, it shall pass an order under Section 452(2) of the Act and it is only thereafter, it can

issue a final notice under Section 636 of the Act.

As the impugned notice, dated 08.04.2015, of respondent No.2 Corporation is in violation of the aforesaid statutory procedure, the same is set aside. Respondent No.2 Corporation is directed to issue a notice under Sections 452(1) and 461(1) of the Act to start with and follow the above noted procedure stipulated thereafter before issuing a final notice under Section 636 of the Act. Respondent No.2 Corporation shall also consider the plea of the petitioner that the offending constructions were regularized under the BRS scheme.

Subject to the above directions, the Writ Petition is allowed.

As a sequel to allowing the writ petition, W.P.M.P.No.50786 of 2015 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

04th December, 2015

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