

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.31288 OF 2011

ORDER

This writ petition is filed for a *writ of mandamus* declaring the action of the 1st respondent-corporation in issuing proceedings dated 22.11.2011 proposing to demolish flat bearing No.003/G3, Ground floor, Hayagreeva Apartments, bearing D.No.7-2-50/51, R.E. Mada Street, Tirupati Town, Chittoor District, as illegal and arbitrary and for a consequential direction to the 1st respondent not to demolish the above said flat.

The case of the petitioner is that she is the owner of the flat bearing No.003, situated at ground floor, Hayagreeva apartments bearing D.No.7-2-50/51, R.E. Mada Street, Tirupati Town having purchased the same through registered sale deed dated 05.10.2005. The petitioner's vendors i.e., owner of the land obtained permission from respondent corporation vide proceedings dated 02.04.2004 and constructed ground + 4 floors instead of constructing ground + 2 floors and sold away the same to various persons including respondents 2 and 3. It is also stated that the parking place originally required is 76 sq.meters, but due to additional constructions of 3rd and 4th floors, it requires more than the actual sanctioned plan. The petitioner further states that she is nothing to do with the deviations made by the builder and that she made an application for regularisation which is pending consideration before the 1st respondent. The flat owners of 3rd and 4th floors also filed BPS applications. The 2nd and 3rd respondents filed various cases against the builder and the 1st respondent due to their pressure, issued impugned proceedings dated 22.11.2011 directing the petitioner to remove her portion within 3 days. Thereupon, the petitioner approached the 1st respondent stating that the BPS application filed by her on 21.05.2008 is pending consideration. The petitioner further states that no notice was issued before the impugned

proceedings are passed. The 1st respondent instead of taking action against the constructions made by the builder in deviation of the sanctioned plan, issued impugned proceedings against the petitioner. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the 1st respondent stating that the building owner has deviated from the sanction plan issued for construction of G + 2 upper floor and constructed apartment building with stilt floor. As such, Municipal Corporation issued notices for stoppage of work and removal of deviated and unauthorised construction. It is also stated that the building owner made an application for regularisation of the building in B.P.S.No.436/3372/2008/G2 and that the endorsement of the same was issued to the building owner on 25.11.2008 asking him to submit the requisite documents for taking further action. But the building owner failed to submit the same. Thereafter, the flat owners approached the District Consumer Forum and made a petition in C.C.No.96/2010 dated 02.11.2010 and also filed a case in the Lokayuktha complaining against the 1st respondent for not initiating action against the deviations in stilt floor. Hence a notice was issued to the petitioner on 22.11.2011 requesting him to remove the flat constructed in the stilt floor. As no reply is received, orders have been passed from the Executive authority for demolition of flat in parking place.

Learned counsel for the petitioner submits that the petitioner's vendor constructed G + 4 floors instead of G + 2 floors deviating from the sanctioned plan and that the petitioner is no way responsible for the same. He also submits that though the petitioner made BPS application in the year 2008, the respondents without passing orders on the same, are taking steps for demolition of the petitioner's flat which is in violation of principles of natural justice. He further submits that the deviations are minor in nature and for each and every deviation, demolition may not be the proper course.

Sri S.D.Goud, learned Standing counsel for the Municipal Corporation submits that though the petitioner made BPS application, he failed to produced relevant documents sought by the 1st respondent, as such the impugned proceedings were issued.

In this case, it is admitted that the petitioner vendor made construction of G + 4 floors in deviation of the sanctioned plan. Since the petitioner claims that his BPS application is pending consideration before the 1st respondent, without going into the merits of the case, petitioner is given one more opportunity to produce necessary documents as requested by the 1st respondent within a period of four weeks from today. On such submission, the 1st respondent corporation may consider the same and dispose of the application of the petitioner in accordance with law. Since the status quo order is already granted in the year 2011, the same shall be continued till the BPS application of the petitioner is disposed of. If petitioner does not provide information as sought by the authorities on 25.11.2008 within four (4) weeks from today, it is open for the authorities to take appropriate action as per law.

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

A.RAJASHEKER

REDDY,J

Date: 01.07.2015

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