

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

TUESDAY, THE EIGHTEENTH DAY OF AUGUST TWO
THOUSAND AND FIFTEEN

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Present

HON’BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.26214 of 2015

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Between:

B. Kishan, S/o. Late B. Ramaiah,
Aged 75 years, Occ: Advocate,
R/o. H.No.6-1-321, Old CIB Quarters,
Khairatabad, Hyderabad-4.

.. Petitioner

AND

State of Telangana,
Rep. by its Principal Secretary
Municipal Administration and
Urban Development Department,
Saifabad, Hyderabad & 2 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

The petitioner claims to be the owner and in possession and enjoyment of Municipal House bearing No.6-1-321, situated at Old CIB Quarters, Khairatabad, Hyderabad. In the year 2007, the petitioner claimed to have applied for building permission to construct a new house. The building application was approved and accordingly, the old house was demolished and new house was built as per the approved plan. The house was assessed for municipal taxation and the petitioner is paying regularly the municipal tax. His name is mutated in the municipal records. While so, the petitioner was served with notice on 04.02.2015 under Sections 452(1) and 461(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') alleging illegal and unauthorized construction of room with asbestos sheet without obtaining prior permission from the 2nd respondent Municipal Corporation. The notice alleges encroachment to the entire property as alleged by the neighbour and the complaint lodged before the 2nd respondent Municipal Corporation. Alleging that no further explanation was submitted by the petitioner, notice under Section 636 of the Act was issued on 14.08.2015 directing the petitioner to remove the illegal construction made within 24 hours. Aggrieved thereby, this writ petition is filed.

2. Learned counsel for the petitioner submits that on

receipt of notice, dated nil.02.2015, under Sections 452(1) and 461(1) of the Act, the petitioner filed explanation on 09.02.2015, which was acknowledged on 10.02.2015, but the impugned order is passed as if no explanation is submitted by the petitioner and such action is *ex facie* illegal and amounts to non-application of mind. Learned counsel for the petitioner also contends the order does not assign reasons for taking such a penal course of action.

3. As seen from the order passed on 14.08.2015, after the notice under Sections 452(1) and 461(1) of the Act was issued, no further notice under Section 452(2) of the Act is issued and straight away, notice under Section 636 of the Act is issued. As seen from the endorsement of Inward Section, dated 10.02.2015, the representation of the petitioner was received by the Office of the Deputy Commissioner. Therefore, the statement made in the order impugned that no explanation was filed is not correct.

4. Learned Standing Counsel fairly submits that since the petitioner submitted representation, even though such representation does not reflect the true stand, as it was not considered while passing orders under Section 636 of the Act, the notice under Section 636 of the Act shall be treated as one under Section 452(2) of the Act and the explanation submitted by the petitioner would be considered and appropriate orders would be passed.

5. Having regard to the above submissions, the Writ Petition is disposed of directing the 2nd respondent Municipal

Corporation to treat the notice under Section 636 of the Act, dated 14.08.2015, as one issued under Section 452(2) of the Act. It is open to the petitioner to submit additional explanation within a period of two (2) weeks from the date of receipt of a copy of this order and on receipt of such explanation or if no explanation is filed within the time granted, it is open to the 2nd respondent Municipal Corporation to proceed and to finalize the issue. It is also open to the petitioner to furnish relevant documents in support of his claim along with the additional explanation. Till the final orders are passed, the respondents are directed not to take any coercive steps against the petitioner. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 18th August, 2015

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HON’BLE SRI JUSTICE P.NAVEEN RAO

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