

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.14398 & 14410 OF 2015

Date: 08.9.2015

WP No.14398 of 2015:

Between :

M.Praveen Kumar, s/o.late Uppalaiah,
Aged about 37 years, occu:Pvt.Employee,
R/o.H.No.2-10-294, Teachers' Colony,
Waddepalli, Hanamkonda, Warangal Dist.

....Petitioner

And

The State of Telangana, rep.by its
Principal Secretary, Municipal Administration
Department, Secretariat, Hyderabad and others.

.... Respondents

This Court made the following :

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COMMON ORDER:

Petitioners claim to be the owners of land to an extent of 490 and 200 square yards in Teachers' Colony, Waddepally, Hanamkonda, Warangal District, respectively.

2. Petitioners made application to the Municipal Corporation for mutating their names in the municipal records and accordingly their names were mutated in the revenue records. While so, according to the petitioners, on 05.09.2014 the revenue authorities came to the house sites of the petitioners and threatened them alleging that the land on which petitioners had constructed the houses is Government land and as per the revenue records Nala was flowing through the petitioners lands. When the petitioners were sought to be dispossessed, petitioners filed W.P.Nos.26608 of 2014 and 26473 of 2014, respectively. Initially this Court granted order of *status quo* and later said writ petitions were disposed of on 08.10.2014 recording submission of the learned Government Pleader for Revenue that without following due process and without affording opportunity of hearing, no unauthorized and illegal constructions were removed. It is further case of the petitioners that petitioner in W.P.No.14410 of 2015 filed O.S.No.587 of 2013 on the file of Principal Junior Civil Judge, Warangal and interim injunction was granted in the said suit and the O.S., is pending. It is further case of the petitioners that on 24.04.2015 notices were issued to the petitioners by the municipal corporation. As per the said notices, relevant documents were submitted by the petitioners to prove their title. However, without considering the documents submitted by the petitioners and without giving further opportunity as stated before this Court, straight away notices under Section 636(1) of Hyderabad Municipal Corporation Act (for short, 'the Act'), were issued to the petitioners to remove the unauthorized structures in the Nala of Waddepally village. Aggrieved thereby,

these writ petitions are filed.

3. Learned counsel for the petitioners submits that before issuing notices under Sections 636 of the Act to remove the unauthorized structures made, no notice under Section 452(2) of the Act was issued and there was no opportunity of hearing granted to the petitioners before taking such extreme course of action and, therefore, the entire action is illegal and liable to be set aside. Learned counsel for the petitioners do not deny the factum of Nala passing adjacent to the properties claimed to have been owned by the petitioners.

4. Learned standing counsel submits that as per the report of the Tahsildar, Hanamkonda, Nala is passing adjacent to the properties of the petitioners. The revenue authorities noticed encroachments into Nala and obstructing free flow of the Nala; during the rainy season, the drainage is flowing into the houses causing filthy atmosphere and danger and harm to the people and to the houses and requested the Municipal Corporation to take appropriate course of action to remove illegal encroachments on Nala. Accordingly, notice was issued, personal hearing was conducted and after due verification of the documents, orders are passed. Learned standing counsel further submits that having noticed that some illegal constructions were made occupying Nala, those constructions are removed and Nala is restored. According to learned standing counsel only encroachments on Nala are removed and other extents of properties of the petitioners are not affected.

5. As seen from the order impugned, there is no merit in the contention of the learned counsel for the petitioners. Petitioners were given notice, personal hearing was conducted and during personal hearing petitioners have submitted their representations/ objections and documents. Those documents are considered and on examination of the report submitted by revenue authorities, orders are passed. It is

thus not correct to contend that no opportunity of hearing was given. It may be true that provision in Section 452(2) was not followed before issuing orders under Section 636 of the Act. It is not grave infraction affecting the procedure otherwise validly observed. However, the scheme of Sections 452 and 636 of the Act, is to follow due process, to give due opportunity, to explain why illegal encroachment or illegal constructions made be not removed and after giving due opportunity only coercive steps be taken by the municipal corporation. In the instant case, due opportunity was afforded and after considering the objections only, final orders are passed. Apparently Nala was encroached causing lot of hardship to others. Therefore, I do not see any irregularity in the procedure followed warranting interference by this Court.

6. I see no merit in the writ petitions and accordingly, writ petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions if any in the writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 08.09.2015

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