

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12098 OF 2005

ORDER:

This writ petition is filed for writ of mandamus declaring the action of the 1st respondent in not demolishing the illegal structures and deviations raised by the 2nd respondent in respect of House bearing No.6-1-282 (B/27) CIB Quarters, Khairatabad, Hyderabad, as illegal, arbitrary and contrary to the provisions of the Hyderabad Municipal Corporation Act, 1955 (for short 'the HMC Act, 1955") and consequential direction to the 1st respondent to secure compliance from the 2nd respondent in respect of the sanctioned plan by removing deviations and illegal constructions of the said house number.

2. The case of the petitioner is that she is the owner and possessor of house bearing No.6-1-283 (B/28), CIB Quarters Khairathabad, Hyderabad. The petitioner alleges that the 2nd respondent is her neighbour and that she is making illegal constructions. Earlier the 2nd respondent filed W.P.No.13966 of 2004, against the petitioner and obtained an order dated 09.08.2004. Pursuant to the said order, a notice dated 14.09.2004 was issued by the 1st respondent to the petitioner under Section 636 of the HMC Act, 1955 and thereafter dismantled the projections made by the petitioner. Thereafter, the petitioner submitted a representation to the 1st respondent on 23.03.2005 indicating the deviations made by the 2nd respondent. As no action has been taken on the said representation, the petitioner got issued a legal notice on 19.04.2005. In response to the said legal notice, the 1st respondent through letter No.39/TPS/C5/MCH/2005 dated 06.05.2005 informed the petitioner that the 2nd respondent submitted a representation stating that she got the construction regularised in the year 1998, but she did not furnish copy of such proceedings to the 1st respondent. As the 1st respondent is not taking any action against the illegal structures and deviations made by the 2nd respondent, inspite of the above representation and legal notice, this Writ Petition is filed.

3. Counter is filed by the 1st respondent stating that the petitioner and 2nd respondent are the neighbours and they have obtained building permissions for

construction of their respective buildings from the 1st respondent. During construction the petitioner has made deviations to the sanctioned plan which is complained by the 2nd respondent and accordingly, the 1st respondent demolished the deviated portion by following due process of law. It is also stated that the 1st respondent has received a complaint from the petitioner against the 2nd respondent regarding unauthorised and illegal construction stated to have been made by the 2nd respondent on narrow dead end public road. Pursuant to which the 1st respondent has inspected the premises and vide letter No.25/ACP/C5/MCH/2005 dated 28.03.2005 the 2nd respondent was asked to produce the sanctioned plan and ownership documents. But, 2nd respondent without producing the said documents, submitted a representation stating that the premises has been regularized by the MCH in the year 1998 itself.

4. It is further stated that the 1st respondent vide letter dated 06.05.2005 informed the petitioner that further action will be taken after due verification of the records. It is also stated that as the relevant file was not available, the 1st respondent has served a speaking order vide No.2835/TPC/C5/MCH/2006 dated 22.06.2006 on the petitioner to produce the sanctioned plan and registered documents within seven days, failing which action would be initiated.

5. The petitioner filed reply affidavit reiterating the averments of the writ affidavit.

6. Heard learned counsel for the petitioner, Sri P. Kesava Rao, Standing counsel for the 1st respondent and P. Ratna Reddy, counsel for the 2nd respondent.

7. The only grievance of the petitioner is that she made a complaint to the 1st respondent with regard to the illegal constructions made by the 2nd respondent in deviation of the approved plan. Since no action has been taken by the 1st respondent, the present writ petition is filed. However, the counter affidavit discloses that the 2nd respondent was directed to produce the documents by granting some time. But the 2nd respondent without submitting those documents, submitted a representation stating that the premises has been regularized. Therefore, after expiry of the said period, the 1st respondent could have initiated action against the 2nd

respondent. More so, the 1st respondent also admits that a complaint has been received from the petitioner against the 2nd respondent regarding unauthorised and illegal constructions stated to have been made by the 2nd respondent, on narrow dead end of the public road. However, this Court cannot examine whether the 2nd respondent has committed any deviations or not without verification and enquiry by the 1st respondent.

8. In view of the same, the 1st respondent is directed to consider the representation/complaint, submitted by the petitioner in respect of the illegal constructions made by the 2nd respondent and take appropriate action after issuing notice to the petitioner and 2nd respondent in accordance with law.

9. With the above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

(A.RAJASHEKER REDDY, J)

24th June, 2015

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