

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.41872 of 2015

ORDER:

This writ petition is filed under Section 226 of the Constitution of India seeking the following relief/s:

“...to issue a Writ of Mandamus or any other appropriate Writ, Order or orders, direction or directions, to declare the proceedings of the 2nd respondent Dt.09.12.2015 in Lr.No.81886/CP/CZ/GHMC/2015-5, whereby the 1st petitioner was called upon to show cause as to why the building permit dated: 15.07.2015 shall not be cancelled U/s.450 of the GHMC Act, 1955, as illegal, arbitrary and unconstitutional and issue consequential directing to the 2nd respondent not to proceed in furtherance to the said notice in any manner, and pass such other order or orders as this Hon'ble Court made deem fit and proper in the circumstances of the case.”

[Reproduced verbatim]

2. I have heard the submissions of the learned senior counsel for the writ petitioners and the learned Standing Counsel for the Greater Hyderabad Municipal Corporation (GHMC) appearing for respondent nos.1 and 2. I have perused the material record.

3. The operative portion of the impugned notice/letter dated 09.12.2015 reads as under:

“ The mater has been carefully examined with reference to the provisions of GHMC Act 1955 and the rules made there under and further on the legal advice, the under signed has withdrawn the abeyance order and informed to you vide reference 7th cited, reserving the rights to proceed further under section 450 of GHMC Act 1955 in accordance with law.

In view of the above you are hereby directed to submit all the relevant documents and also to give explanation, on the pending legal issues and on the misrepresentations (suppression of legal issues) made by you while obtaining

building permission, within 7 days from the date of receipt of this letter failing which the undersigned will take appropriate action under section 450 of HMC Act 1955 on the presumption that you have no cause to show or no explanation to offer.”

[Reproduced verbatim]

4. The learned senior counsel for the writ petitioners would first submit as follows: “The petitioners had obtained building permission on 15.07.2015 for construction of a residential building consisting of stilt + ground + four floors on the property bearing H.No.8-3-224/9/14/B (H-82) (New), Bhavanipuram, Hyderabad. Subsequently, the 3rd respondent had filed an application dated 14.10.2015 claiming ownership over the subject property and *inter alia* stating that the petitioners had obtained permission by suppressing pending litigations before the Civil Court and this Court. On the complaint of the 3rd respondent, the GHMC had issued a notice dated 19.10.2015. To the said notice, the petitioners had sent a reply dated 03.11.2015. Having not been satisfied with the explanation of the petitioners in the reply notice, the GHMC had kept the building permission of the petitioners in abeyance *vide* proceedings dated 03/04.11.2015. Feeling aggrieved of the said orders of the GHMC, the petitioners had filed W.P.No.37095 of 2015. The said writ petition was disposed of along with W.P.No.36123 of 2015 on 07.12.2015 after taking into consideration the submissions made by the learned Additional Advocate General, which are as follows: ‘The learned Advocate General for the State of Telangana, fairly submitted that as the Zonal Commissioner was advised to the effect that he

is not vested with the power to keep a building permit in abeyance, he has issued proceedings, dated 05.12.2015, withdrawing the impugned proceedings dated 03/04.11.2015.’ In the said common orders, as regards the grievance, (of the respondent no.2 in WP.No.37095 of 2015), in WP.No.3613 of 2015 the learned Advocate General (TS) had also submitted as follows: ‘The representation, dated 14.10.2015, will be considered strictly within the parameters of Section 450 of the Act and that after holding a detailed enquiry, in which notices will be given to the parties concerned, an informed decision will be taken and the same will be communicated to the parties concerned within a period of one month from the date of receipt of a copy of the common order dated 07.12.2015 in the said writ petitions.’ Thus, this Court, while adverting to the grievances of the petitioners and the 3rd respondent, had noted the submissions of the learned Additional Advocate General, Telangana State to the above effect and had accordingly disposed of the writ petitions by a common order. Hence, the building permission of the petitioners stood revived.”

5. Be that as it may. A perusal of the material record would show that pursuant to the common order of this Court in W.P.Nos.36123 and 37095 of 2015, the Zonal Commissioner of the GHMC had initiated an enquiry into the matter and that in that process, he had issued the notice dated 09.12.2015 to the 3rd respondent calling

upon him to produce all the relevant documents within seven days from the date of the receipt of the said notice/letter and further stating that on failure of the 3rd respondent to do so, appropriate action would be taken in the matter on the presumption that the 3rd respondent has no cause to show or explanation to offer. On the same day, the learned Zonal Commissioner had also issued the notice/letter, which is impugned in this writ petition, to the writ petitioners. The operative portion of the said notice/letter is already extracted supra.

6. In this backdrop, while making submissions in line with the contentions and the chronology of events pleaded in the writ petition, the learned senior counsel for the petitioners would further submit as under: 'The 3rd respondent in the first instance had stated that he is the owner of the subject property. Later he had claimed that he is the GPA holder of the owners of the property. However, from the contents of the documents that had now come to light, it appears that the 3rd respondent's claim is that he is an agreement holder. Thus, the 3rd respondent had taken inconsistent stands in the matter. The said conduct of the 3rd respondent would itself show that his claims are devoid of merit. The learned Zonal Commissioner, having issued a notice dated 09.12.2015 calling upon the 3rd respondent to submit all the relevant documents in support of his claim, ought to have awaited

a reply from the 3rd respondent and ought to have taken appropriate action in the matter depending upon the reply, if any, given or the failure to give any such reply with relevant documents. However, the learned Zonal Commissioner, without waiting for the 3rd respondent to submit his relevant documents, if any, in support of his claim and also his explanation, if any, and without waiting to verify the genuineness of the claim of the 3rd respondent with reference to his documents, if any, had issued the impugned notice dated 09.12.2015 to the writ petitioners as well on the same day. Either after verifying the documents, if any, of the 3rd respondent or on the failure of the 3rd respondent to produce his relevant documents, the learned Zonal Commissioner ought to have rejected the claim of the 3rd respondent. If such a course was adopted, there would not have been a necessity to issue the impugned notice to the writ petitioners. Therefore, the said action of the learned Zonal Commissioner in simultaneously issuing a notice on the same day to the writ petitioners under Section 450 of the HMC Act, 1955 is arbitrary and illegal and contrary to the provisions of law and such a course adopted by the learned Zonal Commissioner is unwarranted in the facts and circumstances of the case. Hence, challenging the impugned notice, this writ petition is filed.”

7. In reply, the learned Standing Counsel for the respondents would contend that the writ petition is not

maintainable as the impugned notice is not a notice issued under Section 450 of the Act as being sought to be contended by the writ petitioners and as the said notice is only a notice requiring the petitioners to produce their relevant documents and offer their explanation, if any, within the time frame fixed in the notice *inter alia* stating that otherwise appropriate action under Section 450 of the Act would follow. He would further submit that the learned Zonal Commissioner is well within his powers in issuing such a notice. He would also further submit that the writ petitioners had filed this writ petition as a means to obtain some order and proceed with the construction as their building permission stood revived in view of the withdrawal of the proceedings keeping the building permission in abeyance. He has drawn the attention of this Court to Sections 428 to 431 of the HMC Act.

8. It is appropriate to restate that this Court, in the common order dated 07.12.2015 in W.P.Nos.36123 and 37095 of 2015, had recorded the submissions of the learned Additional Advocate General, which are extracted *supra*. Pursuant to the said common order in the writ petitions, wherein the submissions of the learned Advocate General were noted, in detail, the Zonal Commissioner had issued two separate notices to the parties, including the impugned notice, calling upon the parties to produce the respective relevant documents and offer their respective explanations, if any, to enable him to

proceed further in the matter. Section 428 of the Act deals with notice to be given to the Commissioner by the person who intends to erect a building; and Section 429 of the Act deals with the powers of the Commissioner to call upon the person to furnish the information and other documents relating to the building to be erected. It is not in dispute that the law is well settled that an adjudication of title under Section 482 of the Act is beyond the powers of the Commissioner of the GHMC. However, it is also well settled that the Municipal Corporation is having powers to summarily find out *prima facie* as to who should be given permission to construct a building and that the Commissioner has the power to call upon the parties concerned to produce the documents of title. In the impugned notice, the operative portion of which is extracted supra, the petitioners were only directed to submit all relevant documents and offer explanation on the pending legal issues within a time frame. Therefore, the notice issued shall be construed as a show-cause notice and not as a notice issued under Section 450 of the HMC Act and hence, the writ petitioners cannot be heard to say that the Commissioner is not well within his powers in issuing such a notice or letter. Viewed thus, this Court finds that the writ petition is not maintainable and that there is no merit in the contentions of the writ petitioners.

9. Accordingly, the writ petition is dismissed. However, the petitioners are given liberty to submit all their relevant

documents along with their explanation, if any, to the Commissioner within a period of two weeks from the date of the receipt of a copy of this order. It is made clear that the Commissioner shall make available the copies of the documents and the explanation, if any, submitted by the 3rd respondent to the writ petitioners and similarly, the copies of the documents and the explanation, if any, submitted by the writ petitioners to the 3rd respondent and give them adequate opportunity of hearing and take appropriate decision after conducting a detailed enquiry, as already observed in the common order dated 07.12.2015 of this Court in W.P.Nos.36123 and 37095 of 2015. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

23rd December 2015.
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