

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1462 OF 2012

ORDER

The case of the petitioners is that they have purchased an open plot in Sy.No.676/B/2 and 684/A admeasuring 550 sq.yards, situated at Hanmakonda Village and Mandal, Warangal District through a registered sale deed bearing document No.6514 of 2009 dated 08.10.2009. Consequently, they made an application seeking building permission along with the plan and other relevant documents. Since no orders are passed by the respondents, the petitioners started construction under the deemed permission as per Section 437 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') and completed the construction activity within the statutory period of one year. While so, the 1st respondent got issued a notice dated 12.07.2011, to which, the petitioners gave explanation on 15.07.2011. In spite of the same, the 1st respondent issued impugned notice under Section 636 of the Act alleging that the petitioners have violated the provisions of Sections 428 and 429 of the Act and directed them to remove un-authorised construction within 3 days. Though the petitioners made constructions according to the plan submitted to the respondent corporation without any deviations and though explanation is submitted in pursuance to the notices issued, the respondents without passing any orders, visited the petitioners' site on 21.01.2012 and threatened them to demolish the structures. Aggrieved by the same, the present writ petition is filed.

Heard the learned counsel for the petitioner; Smt Pingali Lakshmi, learned Standing counsel for respondents 1 and 2 and Sri M.Ajay Kumar, learned counsel for respondent No.3.

In the instant case, though petitioners submitted explanation in pursuance to the notice issued by the respondents, the impugned

proceeding dated 23.12.2011 was issued which does not indicate that the petitioners' explanation was considered. The respondents issued another notice on 29.12.2011 under Section 636 of the Act stating that the petitioners have not submitted their explanation to the notice issued on 23.12.2011 and thereby asked them to show cause why the un-authorised constructions shall not removed. But admittedly, by the time of issuance of impugned notice itself, the petitioners allege that they have submitted their explanation and the same was not disputed by the respondents. Notice dated 23.12.2011 does not indicate that it is show cause notice but it is issued under Section 636 of Act. Therefore, it indicates that the official who has issued the notices has no basic knowledge of provisions of HMC Act and has not applied his mind while issuing notices. Only on that sole ground, the impugned notice is liable to be set aside. However, the petitioners state that they have made constructions after the lapse of statutory period as per the deeming provision under Section 437 of the Act.

In view of the same, the impugned notice is set aside. However, this order will not preclude the respondent authorities from initiating any action against the petitioners in accordance with law.

Accordingly, the writ petition is allowed. No costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER

REDDY,J

Date: 07.10.2015

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