

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.34798 of 2015

-

Dated 19th November, 2015

Between:

Desai Brothers Limited

...Petitioner

And

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

...Respondents

Counsel for the petitioner: Sri P.Venugopal

for Sri I.Gopal Sarma

Counsel for respondent No.1: AGP for Municipal Administration (TS)

Counsel for respondent Nos.2 & 3: AGP for Revenue (TS)

Counsel for respondent No.4: Sri V.Satyam Reddy

The Court made the following:

ORDER:

This writ petition is filed feeling aggrieved by proceedings bearing No.G1/11228/2015, dated 19.09.2015, of respondent No.4, whereby it has directed the petitioner to voluntarily remove encroached compound wall within three days of receipt of the notice and that otherwise the same will be removed departmentally.

I have heard Sri P.Venugopal, learned Senior Counsel appearing for the petitioner, and Sri V.Satyam Reddy, learned Standing Counsel appearing for respondent No.4.

Respondent No.4 has issued a notice bearing No.G1/Enct/02/2015, dated 19.08.2015, under Section 402 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') to the petitioner, wherein it is alleged that the latter has unlawfully erected the structure at Yellammagutta by encroaching the municipal drain, that as per the petitioner's document, dated 01.04.1964, on the northern side of the property, there is a naala and pucca drain to a width of 32 x 20 feet, but the existing ground width is very narrow and that therefore the petitioner shall get the survey of its total site conducted and submit survey report to the department within three days of receipt of the notice, failing which the Corporation itself will survey and take measurements of the existing property and any land found in excess of the petitioner's possession must be voluntarily given up and the structures to be removed, failing which the Corporation will remove the same under Section 405 of the Act.

Thereafter, the petitioner has submitted its reply on 22.09.2015, wherein it is *inter alia* stated that the petitioner has got the property surveyed through Rtd.Dy.Inspector of Land Records and Survey Department, Nizamabad who has got licence from the Government and that after survey, it was found that the petitioner has raised constructions on its site only and that it did not encroach any part of the municipal drain at all. The petitioner has also referred to the maps drawn by the surveyor on completion of the survey and asserted that these maps clearly show that the compound wall was not constructed encroaching the municipal drain.

Under the impugned proceedings, respondent No.4 has informed the petitioner that verification of the revenue records revealed that the petitioner has encroached the naala/municipal drain by unlawfully constructing the compound wall on the naala area, as a result of which, the water in the drain is getting obstructed.

A perusal of the record shows that the impugned notice was issued on 19.09.2015, whereas the petitioner claimed to have issued the reply on 22.09.2015. No counter affidavit is filed by respondent No.4 as to whether atleast after the impugned notice was issued, it has received the said reply from the petitioner. At any rate, as the petitioner is now claiming that as per the survey conducted, it has not encroached any part of the drain, respondent No.4 is bound to consider this plea of the petitioner before taking further action. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, the impugned notice does not refer to the nature of the revenue records based on which respondent No.4 has concluded that the petitioner has encroached the naala/municipal drain and constructed a compound wall thereon.

In the above facts and circumstances of the case, the impugned notice is set aside and the petitioner is directed to furnish the survey report and copies of maps to respondent No.4 within two weeks from the date of receipt of a copy of this order. Upon receipt of this material, respondent No.4 shall hold a personal enquiry and determine whether the petitioner is in occupation of the drain or not. If it is satisfied that the petitioner has occupied the drain, it shall pass a speaking order and communicate the same to the petitioner before proceeding with further action.

Subject to the above observations and directions, the writ petition is allowed.

As a sequel to disposal of the writ petition, W.P.M.P.No.44725 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

19th November, 2015

VGB