

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.33345 OF 2011

ORDER

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This writ petition is filed for a *writ of mandamus* declaring the action of the respondent in threatening to demolish the building constructed by the petitioner in property admeasuring 246.60 sq.yards in Plot No.120, Sy.No.460/2 situated at Shankar Nagar Cooperative Housing Society Ltd., Hanamakonda, Warangal District, without following the procedure contemplated under the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') and issuing notice under Section 636 of the Act, as illegal and arbitrary and for a consequential direction to the respondents not to interfere with the petitioner's rights.

The case of the petitioner is that the petitioner is the absolute owner and possessor of property admeasuring 246.60 sq.yards in Plot No.120, Sy.No.460/2 situated at Shankar Nagar Cooperative Housing Society Ltd., Hanamakonda, Warangal District having acquired the same from her father by way of registered gift settlement deed dated 19.12.2009. While so, the petitioner obtained permission from the authorities for construction of ground + 1st floor vide permit No.85 dated 16.06.2010, after payment of necessary permit fee and other charges. The petitioner also constructed the 2nd floor and thereafter made an application on 02.09.2011 for sanction of the same. But without passing any orders on the same, the respondents served notice dated 12.12.2011 under Section 636 of the Act on the petitioner alleging certain violations. It is also stated that no preliminary notice dated 08.11.2011 under Section 452(1) of the Act was served on the petitioner. Aggrieved by the proceedings dated 12.12.2011, the present writ petition is filed.

Counter affidavit is filed by the respondent-Corporation stating that since the petitioner failed to comply with the notice issued under Section 452(1) of the Act, the respondent-corporation issued final notice under Section 636 of the Act for removal of illegal constructions. It is also stated that notice under Section 452(1) of the Act was served on the servant of the petitioner on 17.11.2011,

who is residing in the premises. Further, it is stated that though the building permission granted is not for the purpose of running the college, the petitioner has leased out the premises to one Vidyaranya Junior College. The application made by the petitioner on 02.09.2011 seeking permission for construction of second floor is also rejected. It is also stated that the respondent corporation is not empowered to regularise the deviations or the illegal constructions made on the premises unless the government as a policy decision issues guidelines and sought for dismissal of the writ petition.

Heard the learned counsel for the petitioner and Sri Pingali Lakshmi, learned Standing counsel for respondent-Corporation.

In this case, it is not denied that the petitioner has made an application on 02.09.2011, along with necessary fee for sanction of 2nd floor. But the same was rejected. Neither any reasons nor details were given for rejection of the application and not even a copy of the rejection order is filed along with the counter affidavit. It is also stated that the petitioner made application dated 12.06.2015 under Section 455-A of the Act along with necessary document and the deviations shown in respect of 1st floor is 0.50 mts. Though it is stated by the respondents that the notice under Section 452(1) of the Act is served on the petitioner, no proof is filed to show that the said notice has been served on the petitioner. Therefore, the notice dated 08.09.2011 shall be treated as show cause notice under section 452(1) of the Act and petitioner is to submit explanation to the same within a period of four (4) weeks from today. On such explanation being filed, the respondent authorities may consider the same and pass fresh orders in accordance with law. The respondents are directed to dispose of the application stated to be filed by the petitioner under Section 455-A of the Act. Till such time, *status-quo* obtaining as on today shall be maintained. However, it is open for the respondents to take action if any violations are committed by the petitioner.

Accordingly, the writ petition is disposed of. There shall be no order as to costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 18.06.2015

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