

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.36327, 36356, 36372, 36396, 36398,

36411, 36412, 36422, 36423 of 2013,

5746, 5755, 5756, 5762, 5765, 5786

and 5791 of 2015

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Date: 14.10.2015

W.P.No.36327 of 2013

Between:

Aziz Ahmed Khan s/o. Late Habib Ullah Khan,

Aged 62 years, Occu: Doctor, r/o.H.No.8-1-68/50/22,

Peace City Colony, Shaikpet, Manikonda Road,

Hyderabad.

.... Petitioner

AND

The Commissioner, Greater Hyderabad Municipal

Corporation, Circle-10, Khairatabad, Hyderabad

and another.

.... Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.36327, 36356, 36372, 36396, 36398,

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COMMON ORDER:

Writ Petition Nos.36327, 36356, 36372, 36396, 36398, 36411, 36412, 36422, 36423 of 2013 are filed challenging the notice dated 13.11.2013 issued under Section 452 of Hyderabad Municipal Corporation Act, 1955 (for short, 'Act, 1955'). W.P.Nos.5746, 5755, 5756, 5762, 5765, 5786, 5791 of 2015 are filed challenging the notice dated 30.12.2013 issued under Section 636 of the Act, 1955. The subject matter of the writ petitions concern the house properties in Sy.Nos.315 and 316 of Shaikpet village and Mandal, Hyderabad and all the writ petitions are disposed of by this common order.

2. Heard the learned counsel for petitioners, learned counsel for 2nd respondent and the Standing Counsel for the Greater Hyderabad Municipal Corporation (GHMC) and with their consent these writ petitions are disposed of finally by this common order.

3. The relevant particulars of petitioners and the cases filed are as under.

Sl. No.	Name & H No	W.P.No.	Against proceedings	W.P.No.	AgainstNotice
1	Aziz Ahmed Khan,8-1-68/50/22, Peace City Colony, Shaikpet, Manikonda Road, Hyderabad	36327/13	Proceedings No. 3863/TP/CX/GHMC/2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	5746/15	Notice No.3866/TP/CX/GHMC/ 2013, dt. 30.12.2013 of the Commissioner, GHMC,Circle-10, Khairatabad, Hyderabad.
2	Shaheeda Banu,8-1-68/C/50/22/1	36356/13	Proceedings No. 3862/TP/CX/GHMC/ 2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	--	--
3	Syeda Akramunnisa Begum,8-1-68/A/1/17/1	36372/13	Proceedings No. 3868/TP/CX/GHMC/ 2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	5765/15	Notice No.3866/TP/CX/GHMC/2013, dt. 30.12.2013 of the Commissioner, GHMC,Circle-10, Khairatabad, Hyderabad.

4	M A Qayyum,8-1-68/33/B	36396/13	Proceedings No. 3866/TP/CX/GHMC/2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	5755/15	Notice No.3866/TP/CX/GHMC/2013, dt. 30.12.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.
5	Classic Residency Flats Association, rep.by Secretary, S.Abrar Ali Mohiuddin,8-1-65/50/78/1	36398/13	Proceedings No. 3870/TP/CX/GHMC/2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	5762/15	Notice No.3866/TP/CX/GHMC/2013, dt. 30.12.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.
6	Mirza Raheem Baig,8-1-68/50/78/14/1	36411/13	Proceedings No. 3867/TP/CX/GHMC/2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	5756/15	Notice No.3866/TP/CX/GHMC/2013, dt. 30.12.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.
7	Mohd Mustaq Hussain,8-1-68/C/50/35 & 36	36412/13	Proceedings No. 3865/TP/CX/GHMC/2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	5786/15	Notice No.3866/TP/CX/GHMC/2013, dt. 30.12.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.
8	Mohd ZakiddinPlot No.21, Peace City colony (Tenant)	36422/13	Proceedings No. 3869/TP/CX/GHMC/2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	--	--
9	Asra Fathima,8-1-68/50/78/15	36423/13	Proceedings No. 3864/TP/CX/GHMC/2013, dt.13.11.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.	5791/15	Notice No.3866/TP/CX/GHMC/2013, dt. 30.12.2013 of the Commissioner, GHMC, Circle-10, Khairatabad, Hyderabad.

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4. Petitioners claim as owners and in possession of the property bearing house numbers as mentioned in the above table in the housing colony called as “Peace City Colony” Shaikpet, Manikonda road, Hyderabad. According to the petitioners, they purchased the ready built houses in the years 2002, 2006, 2009, 2011, 2012, respectively. Having come to know that their vendor did not obtain building permission, petitioners applied for regularization of the buildings under the building penalization scheme and the said applications are pending consideration of the competent authority. While so, at the instance of Sri Ram Swaroop Agarwal (2nd respondent) in these writ petitions, petitioners were served notice dated 04.10.2013

under Section 452 of the Act, 1955 alleging that petitioners are in illegal and unauthorized occupation of the property which does not belong to them and illegal and unauthorized constructions were made, calling upon them to submit explanation as to why action should not be taken for unauthorised and illegal construction.

5. Aggrieved by the said notice, petitioners in W.P.Nos.36327, 36412, 36422, 36396 and 36398 of 2013 filed W.P.Nos.29841, 29846, 29849, 29859 and 29860 of 2013, respectively. This Court disposed of the above writ petitions by common order dated 10.10.2013 granting liberty to the petitioners to submit appropriate explanations to the impugned notices dated 14.10.2013 on or before 25.10.2013 and the GHMC was directed to pass appropriate orders under sub-section (2) of Section 452 of the Act, 1955 or accept the explanation if such explanation can be accepted. According to the petitioners, in pursuance to the said notice, explanation was submitted by the petitioners, but without taking due regard to the explanation submitted by the petitioners, the GHMC passed orders on 13.11.2013 in exercise of power under Section 452(2) of the Act rejecting their explanation. Aggrieved thereby, petitioners filed first batch of writ petitions in the year 2013. The GHMC passed orders in exercise of power under Section 636 of the Act directing the petitioners to remove unauthorized constructions made by them within 24 hours. Challenging these proceedings, the writ petitions of 2015 batch are filed by petitioners in W.P.Nos.36327, 36372, 36396, 36398, 36411, 36412, 36423 of 2013. At the stage of the admission, this Court by order dated 06.03.2015 directed maintenance of *status quo* by both parties. The said order is extended from time to time.

6. Praying to vacate the interim order, the 2nd respondent filed W.V.M.Ps.

7. The learned counsel for petitioners contended that petitioners are *bona fide* purchasers of the house plots on which houses were constructed and they are unnecessarily being victimized at the instance of the 2nd respondent who claims the subject land as belonging to him. Learned counsel further contended that on earlier occasion, in response to the notice issued on 14.09.2011 under Section 461 of the Act, the Association of the property owners of the 'Peace City Colony', known as

‘Peace City Colony welfare Association’, filed detailed explanation as well as attended for hearing held on 20.12.2012. Having satisfied with the explanation offered, petitioners were informed that the matter was closed. Thus, it is illegal to issue another notice dated 04.10.2013 on the same subject and is not maintainable.

8 . Learned counsel further contended that the notice under Section 452 is not maintainable and the proceedings are liable to be set aside on that ground. According to the learned counsel, proceedings under Section 452 of the Act ought to be initiated against person who erected or re-erected a building and not on a person who subsequently purchased.

9 . He further contended that against any illegal/unauthorized construction, action has to be initiated within three months after such unauthorized construction and lapse of three months, GHMC is not competent to initiate proceedings for removal of alleged unauthorized constructions.

10. He further contended that on noticing the illegalities committed by the vendor of the petitioners, petitioners filed applications for regularization of the alleged unauthorized/illegal constructions under Section 455-A of the Act, 1955 on 06.11.2013. The said application is pending consideration of the GHMC. When building regularization application is filed and the same is pending, no penal action can be taken and on that ground alone impugned proceedings are liable to be set aside.

11. Learned counsel for 2nd respondent contended that his family members were the absolute owners and in possession of the land to an extent of Ac.3.11 guntas in Sy.Nos.315 and 316 of Shaikpet village and mandal, having purchased the same on 08.05.1981 and 11.05.1981. Out of the above extent, house plots were formed and plots to an extent of 4393 square yards were sold between 1996 and 1997. The land to an extent of 923 square yards was taken over by the respondent corporation for widening of the road. Thus, remaining 10684 square yards bearing house nos.8-1-68 and its sub-division numbers is in their possession.

12. According to the learned counsel, taking advantage of the fact that the 2nd respondent was living in Hyderabad city and having seen the unprotected open land, person by name Mohd. Nazeer sought to interfere with the possession and in connivance of the petitioners and others, conspired to grab the land and commenced illegal and unauthorized constructions without obtaining permission from the respondent corporation and without having valid title in their favour. The 2nd respondent instituted O.S.No.648 of 2007 on the file of VII Junior Civil Judge, City Civil Court, Hyderabad. In the said suit decree was passed in favour of the 2nd respondent on 14.10.2008. He further submitted that having come to know the illegal encroachment and unauthorized construction, 2nd respondent complained to the 1st respondent to initiate action against illegal constructions made. Learned counsel further submitted that to remove encroachments, 2nd respondent filed LGC SR No.3171 of 2011, which is pending on the file of Special Court under the A.P.Land Grabbing (Prohibition) Act, 1982.

13. Learned counsel further contended that vexed with the deliberate in action on the part of the authorities of the 1st respondent corporation, 2nd respondent filed W.P.No.22834 of 2012 to initiate action against the unauthorized and illegal constructions made. The said writ petition was disposed of by order dated 27.07.2012. This Court directed the respondents 2 and 3 in the said writ petition to take necessary further action in accordance with law against any unauthorized construction in Sy.Nos.315 and 316 of Shaikpet village after following due procedure. Learned counsel submitted that the impugned notices are issued in due compliance of the orders of this Court in the above writ petition as well as in W.P.No.29841 of 2013 and batch filed by the petitioners and there is no illegality or irregularity in the notices issued. He further contended that even though notices under Section 636 of the Act were issued on 30.12.2013 authorities deliberately kept quiet for more than 1½ year and this would itself clearly show that the respondent corporation was abetting the illegalities committed by the petitioners. Complaining of alleged illegal action by the GHMC, 2nd respondent filed C.C.No.815 of 2013 and only after notice was issued in the C.C., the petitioner filed second batch of writ petitions.

14. Learned standing counsel for Respondent Corporation submitted that in accordance with the directions issued by this Court only appropriate action is taken. There is due compliance of the procedural requirements of the Act and the directions issued by this Court in two orders passed at the instance of the 2nd respondent and petitioners, respectively. He further submitted that petitioners did not obtain building permission before undertaking constructions and, therefore, the constructions made were illegal. It is further submitted that the petitioners being the purchasers of the subject properties, assuming that their vendor committed illegalities, they are equally responsible and petitioners cannot seek to escape the rigors of law by contending that they did not make illegal construction. The title can validly pass on to the petitioners only if the vendor has valid title or construction was validly made by the vendor.

15. He further submitted that as soon as the issue has come to the notice of the competent authority, proceedings were initiated and there was no delay in initiating the action. According to the 2nd respondent, building construction is not completed even now.

16. He further submitted that the building regularization applications filed by the petitioners were considered and having noticed that the applications were defective, the same were rejected by proceedings dated 27.12.2013 and served on the petitioners on 03.01.2014. Thus, no building regularization application is pending with the respondent corporation and, therefore, the action initiated by the respondent corporation to remove illegal/ unauthorized constructions is in accordance with law.

17. In response to the stand of the respondent corporation, learned counsel for the petitioners contended that order of rejection of applications for grant of building permission is not served on the petitioners and copy of the order is only now passed on to the petitioners and seeks leave of the Court to permit the petitioners to file an appeal against the said order in accordance with the scheme of regularization.

18. Learned counsel Sri V.M.M.Chary though opposes leave to the petitioners to file an appeal, however submitted that even if leave sought by petitioners is granted a strict time limit along with default clause has to be prescribed in preferring the appeal and petitioners should not create third party interest in the property in the mean time and shall give an undertaking that they will not undertake further construction. He also submitted that 2nd respondent is also be put on notice and he be given opportunity of hearing by the appellate authority while considering such appeal.

19. The pleadings on record would disclose that there is a dispute regarding ownership of the land in Sy.Nos.315 and 316 of Shaikpet village. The 2nd respondent claims to be the owner of large extent of land, out of which petitioners alleged to be in occupation of individual house plots and made illegal constructions. On the contrary, petitioners claim that they are the bona fide purchasers and purchased ready built houses on due verification of the title. This Court is not inclined to go into the title dispute.

20. The short issue for consideration in this batch of writ petitions is whether the action initiated by the respondent corporation directing the petitioners to remove unauthorized and illegal constructions made by them without obtaining due permissions is valid and whether coercive action can be taken when building regularisation applications are pending?

21. The material on record would disclose that no building permission was granted either to the vendor of the petitioners or to the petitioners to undertake construction of the buildings in the respective plots. It is not in dispute that constructions are made/are being made without proper permissions. Section 428 of the GHMC Act mandates obtaining building permission before undertaking construction of any building within the jurisdiction of the GHMC. Section 452 vests power in the competent authority to initiate proceedings in respect of the building activity commenced contrary to the Act or byelaws. Sub-Section (1) is the first stage of such

initiation. A show cause notice be served calling upon the occupier/owner of the building to submit explanation on the alleged illegal construction made. If no explanation is filed or explanation filed is not satisfactory, in terms of sub-section (2), it is permissible to the competent authority, subject to his satisfaction, call upon to show cause as to why direction should not be issued for removal of unauthorized/illegal construction made. This is the second stage of opportunity of hearing to erring person. If an explanation is filed, on consideration of such explanation if competent authority is not satisfied or if no explanation is filed on satisfaction of the competent authority that illegal structure is made and the same is required to be removed, if he holds that such construction was unauthorised, by written notice, he may direct the person concerned to remove or pull down the construction made. It is competent for the GHMC to remove the illegal construction on its own, if the person does not comply with the notice under Section 636 and recover costs incurred for such removal.

22. In valid exercise of power as referred to above and as a consequence to notice dated 4.10.2013 and in due consideration of explanation of petitioners, notices under Section 452 (2) of the Act were issued on 13.11.2013. On a challenge made by the petitioners against the notice dated 4.10.2013 in W.P.Nos.29841 of 2013 and batch, this Court held that issuance of notice is valid and granted liberty to the petitioners to file their objections as deemed fit and further directed the GHMC to consider the said objections and pass appropriate orders. The notices dated 13.11.2013 are issued in consequences to the directions of this court. There is no error of jurisdiction or competence to the authority who issued the impugned notices. I, therefore, see no illegality or irregularity in the notices dated 13.11.2013 warranting interference by this Court. Thus, there is no merit in the contentions urged in Writ Petition Nos.36327, 36356, 36372, 36396, 36398, 36411, 36412, 36422, 36423 of 2013.

23. It is seen that notices under Section 636 of the Act were issued on 30.12.2013. Petitioners kept quiet for almost 1½ years and invoked jurisdiction of this Court as if the said notices were served on them only recently. There is no averment in the affidavit filed in support of the writ petitions as to when the notices dated 30.12.2013 were served on them, except contending that since W.P.No.36327 of 2013 and

batch are pending, notices could not have been issued. It appears that notices were issued immediately, after following due process and notices were served.

24. The specific plea of the petitioners against initiation of proceedings under Sections 452 and 636 of the Act was on the ground that petitioners have availed benefit provided by Section 455-A of the Act and applied for regularization of the alleged unauthorized/ illegal constructions made and said applications are pending and when such application are pending, it is not permissible for the respondent corporation to take penal action against the petitioners. I see no merit in the said contention. Respondent Corporation considered the applications submitted by the petitioners to regularize their illegal constructions under the building regularization scheme and having found defects in such applications, by proceedings dated 27.12.2013 their applications were rejected. Thus, no building regularization application is pending with the respondent corporation. Therefore, I see no irregularity or illegality in the procedure followed by the respondent corporation in initiating proceedings under Section 452 of the Act leading to issuance of the orders under Section 636 impugned in the 2015 batch writ petitions directing the petitioners to remove the unauthorized construction made warranting interference by this Court.

25. There was serious debate on the service of proceedings dated 27.12.2013 rejecting application for regularisation. According to the learned standing counsel, notices were served on 03.1.2014 on all the petitioners. Copies of which were received by the President of the Association. The said stand of the respondent corporation is stoutly denied by the counsel for petitioners stating that no such notice was served on the petitioners. Learned counsel for petitioners further contended that if such notices were served on the petitioners, they would have taken immediate steps for rectification of the defects pointed out as such defects would have been easily rectified. He further submitted that the scheme of regularization envisages right of appeal against rejection of application for regularization and petitioners could have availed said remedy of appeal if copy of the same was served on them. He submitted that petitioners have come to know of such rejection only for the first time when an averment is made in the counter affidavit filed on behalf of 1st respondent and copies were furnished only during the course of hearing of the writ petitions. He, therefore, submitted that the petitioners be given an opportunity to

avail remedy of appeal and until the appeal is considered, no coercive action should be taken against the petitioners.

26. The respondent Corporation could not place on record proof of effective service of proceedings dated 27.12.2013 and right to appeal is not denied, in the peculiar facts of this case, I am of the considered opinion that the petitioners be given an opportunity to file an appeal against the proceedings dated 27.12.2013. However, petitioners shall file, if so advised, appeals against rejection of application for regularisation of illegal/ unauthorised construction on or before 16.11.2015. Petitioners shall implead the 2nd respondent as party to the appeals and shall serve copies of the appeals on learned counsel on record in these writ petitions, before filing the appeals. The 2nd respondent is entitled to file reply to the appeal filed by the petitioners within further period of two weeks by serving advance copy to the petitioners or their counsel. Both parties are entitled to file documents in support of respective claims. After receipt of appeal filed on or before 16.11.2015 and the response from the 2nd respondent, the appellate authority shall fix a date for personal hearing, by advance intimation to the petitioners and 2nd respondent. Petitioners as well as 2nd respondent shall appear on the date fixed in person or through their advocates. They shall cooperate in early conclusion of proceedings. After affording personal hearing, the appellate authority shall pass reasoned orders and communicate the same to the petitioners as well as to the 2nd respondent. The entire exercise shall be completed as expeditiously as possible and at any rate within three months from the date of receipt of copy of the order.

27. Accordingly, Writ Petition Nos.36327, 36356, 36372, 36396, 36398, 36411, 36412, 36422, 36423 of 2013 are dismissed and Writ Petition Nos.5746, 5755, 5756, 5762, 5765, 5786, 5791 of 2015 are disposed of. However, insofar as the Writ Petition Nos.36356 of 2013 and 36422 of 2013 are concerned, liberty granted to the petitioners in W.P.Nos. 5746, 5755, 5756, 5762, 5765, 5786, 5791 of 2015 is also granted and the dismissal of the writ petitions do not come in the way of availing the remedy of appeal against rejection of regularization order dated 13.11.2013.

Miscellaneous petitions if any pending in the writ petitions shall stand closed. There shall be no order as to costs.

_____**JUSTICE P.NAVEEN RAO**

Date : 14.10.2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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