

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION NO.911 OF 2008

ORDER:

This Writ Petition was filed challenging the construction made by the fifth respondent in plot No.14, western part in Survey No.9/I/1, W-11, B-10 in Road No.2, Vijayapuri Colony, Saroornagar (V), L.B.Nagar Municipal Circle, Ranga Reddy District, in spite of complaints and issuing proceedings by the fourth respondent on 25.11.2010 regularizing the unauthorized constructions.

The petitioner is a neighbour to the fifth respondent. He stated that he submitted representation on 07.04.2007 to the respondents 2 to 4 against unauthorized constructions made by the fifth respondent without leaving the setbacks. The fourth respondent did not take any action. He submitted his representation on 09.10.2007 to the third respondent, which also did not result in any response. He submitted a complaint to the Director General, Vigilance and Enforcement, Hyderabad on 05.11.2007 duly marking copies to respondents 3 and 4. He submitted an application on 11.12.2007 seeking information with regard to the sanctioned building plan issued in favour of the fifth respondent and the fourth respondent replied stating that there is no sanctioned building permission for construction of ground + 2 floors made by the fifth respondent. In spite of these steps, when the fifth respondent was going ahead with the construction and completed 80% of the building and occupied the first floor in semi-finished state of construction, he filed the present Writ Petition.

This Court, by order dated 12.02.2008, directed the second respondent to forthwith stop construction made by the fifth respondent

and by further order dated 29.06.2011, this Court appointed two advocates as commissioners to inspect the premises. This Court noticed that the official respondents were not taking any action. They have filed a report. Respondents 2, 3 and 4 filed a counter affidavit followed by a counter affidavit of the fifth respondent.

The counter affidavit of respondents 2 to 4 stated that the fifth respondent started construction of building in plot No.14 without obtaining any building permission and without leaving any setbacks as per the provisions of the GHMC Act ("the Act" for brevity) and the Building Bye-laws. Pursuant to the orders of this Court dated 12.02.2008, the premises was inspected by the Town Planning Staff of L.B.Nagar Circle on 16.02.2008 and found that the building with ground + 2 floors was already completed and only marble fixing work was left. In view of the orders of this Court, the work was stopped and a notice was issued under Section 461 of the Act directing the petitioner to produce the relevant approval plans. The fifth respondent did not produce any sanctioned plan nor gave any explanation to the said notice. However, an application was filed on 10.02.2006 in terms of G.O.Ms.No.423 M.A. dated 31.07.1998 and the petitioner remitted the amount on 23.02.2007. In the meanwhile, the Revised Building Rules, 2006 issued under G.O.Ms.No.86 dated 03.03.2006 came into force. She was informed to submit revised building plan as per the new Government order. The fifth respondent failed to respond to the earlier notice. Notice under Section 636 of the Act was issued on 21.02.2008 to remove the unauthorized construction. In the meanwhile, the Government of Andhra Pradesh issued G.O.Ms.No.901 dated 31.12.2007 for regularization of unauthorized constructions and the petitioner submitted an application by suppressing the present writ

proceedings and got regularized the construction. Accordingly, proceedings were issued on 06.10.2010 and 25.11.2010 respectively. The office omitted to note the pendency of the Writ Petition while considering the said application.

The fifth respondent filed a counter stating that the petitioner has not approached the Court with clean hands. The petitioner himself availed the benefit of Building Penalization scheme by filing an application. She filed application subsequent to filing of the BPS application of the petitioner. She further states that she submitted an application to the authorities seeking building permission on 06.02.2006. She went ahead with the construction under deemed provision. She applied for assessment of house tax and the property was assessed to house tax since 01.10.2007. The report submitted by the officers and the advocate Commissioners did not vary and the violations/deviations are minor in nature.

In those circumstances, this Court called for the file relating to the regularization of the construction and in spite of several adjournments, the file is not produced. Learned Standing Counsel appearing for the respondents 2 to 4 submits that the file is missing and it could not be traced.

In the circumstances, the only course left open to this Court is to direct the Chief City Planner, GHMC to call for the file relating to the constructions made by the petitioner, the case of regularization issued on 25.11.2010 and hear both the parties, the petitioner and the fifth respondent and see whether the orders of regularization are in violation of G.O.Ms.No.901 dated 31.12.2007 and pass appropriate orders thereof within three (3) months from the date of receipt of a copy of this order.

It is open to both the parties to file appropriate documents in support of their case.

Accordingly, the Writ Petition is allowed and remanded. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(A.RAMALINGESWARA RAO, J)

22nd November 2016
RRB

