

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

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W.V.M.P.No.1313 in W.P.No.1863 of 2012
and
WRIT PETITION No.1863 of 2012

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COMMON ORDER:

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In this Writ Petition, the petitioner has questioned the proceedings dt.19-01-2012 issued by 1st respondent alleging that petitioner had made construction in violation of an order dt.01-12-2010 passed by the VI Junior Civil Judge, City Civil Court, Hyderabad in I.A.No.458 of 2010 in O.S.No.2330 of 2010.

2. Heard Sri L.J.Veera Reddy, learned counsel for petitioner, Sri N.Ashok Kumar, learned Standing Counsel for respondent Nos.1 and 2 and Sri K.Goverdhan Reddy, learned counsel for Sri N.Vinesh Raj, learned counsel for 3rd respondent.

3. It is the contention of the learned counsel for petitioner that the notice under Section 452(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act") dt.13-12-2011 was issued by 1st respondent alleging that there were violations of

mandatory front open space by petitioner, that the petitioner had submitted an explanation on 21-12-2011, but the impugned notice dt.19-01-2012 is issued on a totally different ground that the petitioner has made constructions on the northern side violating the temporary injunction order granted by the Civil Court.

4. This fact is not denied by the learned counsel for respondents.

5. Learned counsel for 3rd respondent states that the suit O.S.No.2330 of 2010 filed by 3rd respondent against petitioner has been decreed on 21-11-2012 and that 3rd respondent was granted a mandatory injunction by the Civil Court.

6. Learned counsel for petitioner further pointed out that the northern side, in respect of which the injunction order was obtained by

3rd respondent, is not the front open space and therefore the impugned notice has to be set aside. This is a question of fact which cannot be gone into by this Court.

7. However, since there is considerable force in the submission of the learned counsel for petitioner that the impugned notice

dt.19-01-2012 makes out a new ground which is not mentioned in the show cause notice dt.13-12-2011, the Writ Petition is allowed and the said notice dt.19-01-2012 issued by respondent Nos.1 and 2 is set aside.

8. Respondent Nos.1 and 2 shall issue fresh show cause notice to petitioner setting out the grounds on which they alleged that petitioner's construction in the premises bearing No.4-2-363 and 364 is illegal, invite an explanation from the petitioner and also the 3rd respondent, consider the said explanations along with any material which the petitioner and 3rd respondent may wish to rely and then pass a reasoned order and communicate the same to petitioner as well as 3rd respondent. This exercise shall be completed within eight (08) weeks from today. Till this exercise is completed, B.R.S. application submitted by petitioner shall not be considered by respondent Nos.1 and 2. No costs.

9. Consequently, W.V.M.P.No.1313 of 2012 is dismissed.

10. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 29-02-2016

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