

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.15514 of 2011

ORDER

The petitioner claims that she is the owner of house bearing No.1-8-350, Quarter No.19/2RT, Balasamudram, Hanamkonda, Warangal District. She obtained permission for construction of RCC building, ground + first floor *vide* permit dated 6.4.2009. She states that she constructed the building in accordance with the sanctioned plan with minor permissible deviations. At the instance of her neighbour, the first respondent issued a notice on 2.2.2010 stating that the petitioner constructed the building with deviations. Pursuant to the same, the petitioner submitted her explanation on 23.4.2011. Except mentioning the same in the reference, the first respondent has not considered the same and issued a notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') on 18.4.2011 asking the petitioner to remove the deviated portion. Challenging the same, the present writ petition is filed.

While admitting the writ petition, this Court by order dated 13.6.2011 granted interim stay of demolition for a period of four weeks and the said interim order was extended until further orders by order dated 28.6.2011. The said order has been in operation till today.

The affidavit filed in support of the writ petition discloses that the petitioner filed another W.P.No.5248 of 2010 before this Court seeking a direction to the respondent to take steps for

stopping the illegal construction made by the petitioner. The said writ petition was disposed of directing the respondent to take further steps in pursuance of the notice issued under Section 452 of the Act and pass appropriate orders after affording an opportunity to the petitioner. Pursuant to the same, the petitioner submitted a detailed explanation on 23.4.2011 to the notice issued under Section 452 of the Act and the present impugned order was passed on 28.4.2011 stating as follows:

“Sub: Warangal Municipal Corporation-Town Planning Branch-Action against sanction plan deviation/violation certain-explanations, dated 23.4.2011-not satisfied - action-reg.

Ref: 1.Hon’ble High Court of A.P. Order in W.P.No.5248/2010.

2.This office notice dated 2.2.2010 U/s.452 of HMC Act, 1955.

3.This office notice U/s.636 of HMC Act, dt.18.4.2011.

4.Your explanation, dated 23.04.2011.

With reference to the subject and reference cited, it is informed to you that this office is not satisfied with your explanation on deviation portion which was against the sanctioned plan.

Therefore, you are hereby directed to remove the said deviation portions (i.e.Side-1-0.40 m and Front 0.80m) which were constructed against the sanctioned plan within (24) hours failing which the said deviated portions constructed against sanctioned plan will be removed departmentally and the expenditure incurred will be collected from you.”

From a reading of the above notice, it is evident that the explanation submitted by the petitioner was not at all considered except mentioning the same in the reference.

In the circumstances, the impugned order dated 28.4.2011 is set aside and the matter is remanded to the 1st respondent-Warangal Municipal Corporation, for considering the explanation of the petitioner and passing appropriate orders in accordance with law. Till such time, no demolition shall take place.

Accordingly, the Writ Petition is allowed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

1st December, 2016
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