

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.10666 of 2012

ORDER:

This Writ Petition was filed challenging the inaction of respondent Nos.1 to 3, in removing unauthorized construction of respondent No.4, pursuant to the order dated 20.10.2011 issued in proceedings No.BPS/19/C5/SZ/2008-10, as illegal and arbitrary.

The petitioner states that, when respondent No.4 made illegal construction by encroaching into road on both sides, without obtaining any permission, the petitioner's mother filed W.P.No.15703 of 2010. This Court, by order dated 16.07.2010, disposed of the same with a direction to respondent Nos. 1 and 2 to treat the petitioner's representation dated 08.12.2008 as objections to the regularization made by respondent No.3 therein, and pass appropriate orders.

It appears that, after disposal of the above Writ Petition, an order was passed on 09.12.2010 regularising the unauthorized construction. But the said order was not communicated to the petitioner herein. Alleging non-compliance of the order passed by this Court on 16.07.2010, the petitioner filed C.C.No.1632 of 2010. In view of the said contempt case, the order passed on 09.12.2010 was revised, and an order dated 20.10.2011

passed without notice to respondent No.4 was produced before this Court in the contempt case. In view of the said order, the contempt case was closed.

Now the petitioner came up with the present Writ Petition stating that even the said order is being not implemented. When the case is taken up for consideration, learned counsel appearing for respondent No.4 submits that respondent No.4 is not aware of the order passed on 20.10.2011, and the order dated 09.12.2010 speaks of removal of balconies only. The present impugned order directs respondent No.4 to remove the south-east corner toilet and part of the structure made in first floor duly projecting the slab on the road margin.

As usual, counter affidavit is not filed by respondent Nos.1 to 3. Even after granting time on 06.12.2016, no instructions were issued to the learned standing counsel appearing for respondent Nos.1 to 3.

It is clear from the above facts that the constructions made by respondent No.4 were earlier regularized on 09.12.2010 by considering the objections filed by the petitioner but the said order was not communicated to the petitioner. As a result of which, alleging non-implementation of the order in W.P.No.15703 of 2010 dated 16.07.2010, the petitioner filed C.C.No.1632 of 2010 and, in the said contempt case, a revised order dated

20.10.2011 was produced. Now it transpired that the said revised order was made without notice to respondent No.4. The contest appears to be with regard to encroachment made by respondent No.4 on the road margin or on the land which does not belong to the petitioner. The present Writ Petition was filed seeking implementation of the order dated 20.10.2011 of which respondent No.4 has no notice. However, since the impugned order dated 20.10.2011 was passed without notice to respondent No.4, the proceedings dated 20.10.2011 are set aside, and respondent Nos.1 to 3 are directed to reconsider the matter, in the light of the sanctioned plan submitted by respondent No.4, hearing the petitioner and respondent No.4, and pass a fresh order, in accordance with law, within a period of three months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of with the above directions.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No order as to costs.

A. RAMALINGESWARA RAO,J

Date:20.12.2016
 usd

