

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Appeal No. 821 of 2016

JUDGMENT: (per the Hon'ble The Acting Chief Justice Ramesh Ranganathan))

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed in Writ Petition No. 15959 of 2016, dated 28.7.2016, wherein the petitioner had questioned the action of the respondents in issuing Section 636 notice for demolition of the petitioner's building.

From the order of the learned Single Judge, it is evident that the petitioner claimed to own an extent of 153.33 sq. yards of land in Survey No 686/A at Jangan Shivar, Ramagundam Mandal which, according to him, was called "new vegetable market" area of Godavarikhani Town; two registered sale deeds were executed in the year 1994 in respect of the said land; he made an application, seeking permission for construction, on 3.12.2007; and he had commenced construction with the oral permission of the municipal staff.

It is not in dispute that the petitioner has constructed a ground + three upper floors building. Section 452 (1) and 461(1) notices were issued to him on 15.3.2016, and subsequently a notice under Section 452(2) was issued on 4.4.2016, to which the petitioner submitted a reply contending that he had commenced construction with three floors prior to coming into force of the Building Regularization Scheme (B.R.S.) notified by the Government in G.O. Ms. No. 152, dated 2.11.2015 by the cut off date of 28.10.2015. He also claimed to have filed O.S. No. 72 of 2008 before the Junior Civil Judge, Peddapalli seeking injunction

against the 2nd respondent who, he claimed, was interfering with his possession and enjoyment. The impugned order dated 26.4.2016 was, passed under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), informing him that notices had been issued to him to stop construction, even at the stage of construction; he had applied for regularization under B.R.S. only for the ground floor, and not for the other three upper floors; and, pendency of such an application, did not mean that permission for regularization has been granted.

In the order under appeal, the learned Single Judge took note of the submissions, made by the learned Standing Counsel in the counter-affidavit, that the petitioner had applied under the B.R.S. Scheme for regularisation of a residential house bearing No. 16-2-275/7 in Survey No. 668 at Shivajinagar, Godavarikhani only in respect of the ground floor of 128.19 sq. mtrs under G.O. Ms. No. 152, dated 2.11.2015; and there was no application for regularization of the constructions made in the first, second and third floors. On the ground that neither was permission granted for making construction of the three upper floors, nor was regularization of the three upper floors sought under the B.R.S. Scheme, the learned Single Judge granted the petitioner four weeks time to remove the first, second and third floors voluntarily, failing which the second respondent was permitted to execute its order dated 26.4.2016, and to demolish the first, second and third floors.

Sri A.Prabhakar Rao, learned counsel for the appellant, would submit that, in terms of Section 452(2) of the Act, an opportunity of personal hearing is required to be afforded to the

petitioner-appellant; and as the statutory requirement of a personal hearing has not been afforded to him, the impugned notice, under Section 636 of the Act, necessitates being set aside. Learned counsel would rely on **T.Rama Mohana Rao vs. State of Andhra Pradesh & Others**¹ in this regard.

Section 452 (2) of the Act stipulates that if a person fails to show sufficient cause, as required under Clause (a) or (b) of sub-section (1), to the satisfaction of the Commissioner, why such building should not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work, and the expenses thereof shall be paid by the said person. In **T. Rama Mohana Rao**, a Division Bench of this Court observed that action was intended to be taken under Section 452 inviting explanation; when the explanation was invited, it must reach its logical conclusion of acceptability or non-acceptability; and the order of removal passed by the Municipal Authority, without considering the explanation, was inconsistent with the aforesaid statutory provisions, apart from being in breach of the principles of natural justice. The only requirement under Section 452(1) and (2), as held by the Division Bench in **T. Rama Mohana Rao**, is to give the person, against whom action is proposed to be taken, an opportunity of being heard.

Sri A. Prabhakar Rao, learned counsel for the petitioner, would submit that, independent of the judgment of the Division Bench in **T.Ramamohan Rao**¹, Section 452(1)(b) requires the Commissioner to call upon the petitioner to attend personally on a day and time as specified by him. Clauses (a) and (b) of Section

¹ 2014(5) ALT 90

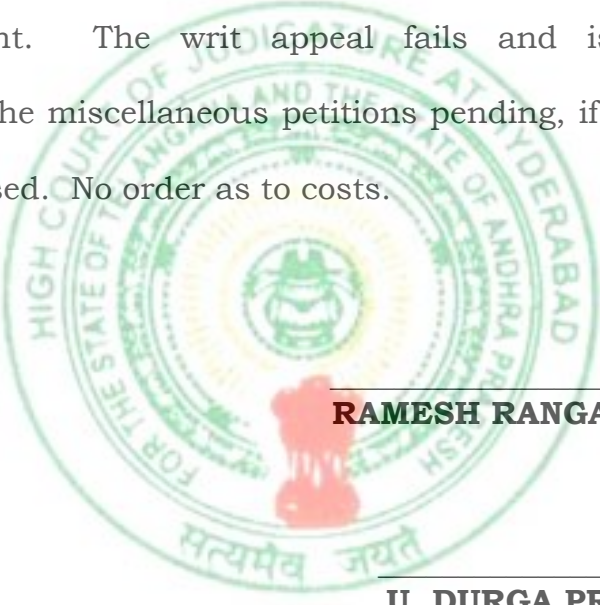
452 are in the alternative, as is evident from the words “or” used in between. The Commissioner is entitled either to issue a written notice or to give a personal hearing to the defaulter. In the present case, a notice under Section 452(1) of the Act has, admittedly, been issued. Sri A. Prabhakar Rao, learned counsel for the appellant would draw our attention to the directions of the Division Bench, in **T. Rama Mohana Rao**, to the Commissioner to give an opportunity of personal hearing to the defaulter, to submit that similar direction should be issued in the present case also.

Compliance with the rules of natural justice is not a needless ritual or an empty formality. We asked Sri A. Prabhakar Rao, learned counsel for the appellant, to tell us what the petitioner would state, in case if he were to be afforded an opportunity of a personal hearing. Except to reiterate that the petitioner-appellant should be given an opportunity of a personal hearing, Sri A. Prabhakar Rao, learned counsel for the appellant, is not in a position to state why the action, sought to be taken against the appellant by the Ramagundam Municipal Corporation, is illegal. To satisfy ourselves that the action of the Corporation is in accordance with law, we have also examined the copy of the application, submitted by the petitioner, seeking regularization. It is evident therefrom, that the said application was filed only for regularization of the ground floor of the building.

While Smt. M. Bhagyasri, learned Standing Counsel for the Ramagundam Municipal Corporation, would contend that, even this application is for a different survey number and not the survey number in which the building has been constructed, it is wholly unnecessary for us to delve on this aspect, as, even in the order

under appeal, the learned Single Judge has only directed the appellant herein to remove the three upper floors of the building, and not the ground floor. Consequently any action, which the Corporation can take, till the petitioner's application for regularization is disposed of, is only to demolish the three upper floors. Needless to state that regularisation of the illegal construction, of the ground floor, will be subject to the result of their application for regularization.

We see no error in the order passed by learned Single Judge necessitating interference in proceedings under Clause 15 of the Letters Patent. The writ appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No order as to costs.



RAMESH RANGANATHAN, ACJ

U. DURGA PRASAD RAO, J

12th September, 2016

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