

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

WRIT PETITION No.27350 of 2007

ORDER:

In this Writ Petition, the petitioner complains of the inaction by

2nd respondent in allowing the respondent Nos.3 and 4 to make illegal and unauthorized constructions in the ground floor of Chandra Priya Residential Towers, H.No.13-606-15 (New), Railway Station Road, Anantapur more specially in the area allotted for parking.

2. The petitioner is an Association of Flat Owners of Apartments Complex and is a registered Association registered under the A.P. Societies Registration Act, 2001.

3. Respondent Nos.3 and 4 obtained permission vide B.P.No.33 of 2000 dt.12-07-2000 from 2nd respondent to construct residential apartments in the above premises.

4. It is alleged by the petitioner that there are several deviations in the construction made by respondent Nos.3 and 4, that they have not adhered to the sanctioned plan and respondent Nos.3 and 4 even constructed the

apartments in the area earmarked for parking as per Municipal plan.

5. It is the contention of the petitioner Association that in spite of legal notice dt.23-08-2006 issued to 2nd respondent bringing to his notice the illegal constructions and deviations made by respondent Nos.3 and 4, nothing has been done by 2nd respondent to demolish the same in exercise of its power under the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act").

6. Learned counsel for petitioner relied upon the judgment in **C.S.R. Estates Vs. HUDA**^[1] wherein this Court had held that the area earmarked for car parking cannot be utilized or modified for any other purpose.

7. Two counter affidavits were filed by 2nd respondent. The 2nd respondent admitting that there are structures in the parking area and all the flats and shops were constructed in deviation of the sanctioned plan by 4th respondent. In the said counters, the 2nd respondent merely stated that they prosecuted the 4th respondent and filed S.T.C.No.124 of 2001 against him wherein he was convicted and sentenced Rs.300/- fine. It is also pointed

out that the petitioner Association had moved the Consumer Court alleging deficiency of service by respondent Nos.3 and 4 and lost the same. It is stated that the building was completed by respondent Nos.3 and 4 in 2001; that notice to respondent Nos.3 and 4 for making unauthorized constructions were issued by 2nd respondent in the year 2000 to correct the deviations; and two more notices were issued on 29-12-2010 and 12-10-2011 to clear the parking place.

8. Although in that counter it is contended that 2nd respondent had taken measures against unauthorized constructions, except filing of the prosecution against respondent Nos.3 and 4, no action appears to have been taken under the provisions of the Act to remove the deviations or illegal constructions made in deviation of the sanctioned plan. A direction is sought from this Court by 2nd respondent to respondent Nos.4 and 5 and other owners to bear costs of removal of unauthorized constructions in the stilt floor and parking area and for clearing the parking place after removal of unauthorized structures.

9. Although Sri K.G.S.Surendranath Yadav, learned counsel filed appearance on behalf of respondent Nos.4

to 8, none appears on his behalf. Notice to respondent Nos.9 and 10, who are legal representatives of the deceased 4th respondent were also served, but there is no representation on their behalf. 3rd respondent has been served but none appears on its behalf.

10. It is an admitted fact that after obtaining sanction from the

2nd respondent, respondent Nos.3 and 4 have made constructions in deviation of the sanctioned plan including making constructions in the place earmarked for parking. In **C.S.R. Estates** (1 supra), this Court has held that area earmarked for car parking cannot be utilized or modified for any purpose. The 2nd respondent is enjoined as per Section 452 of the Act to ensure that the construction of buildings is taken up by persons who obtained sanction from it in accordance with the sanctioned plan; if such constructions are in not accordance with the plan, the 2nd respondent is obligated to issue a show cause notice to the person making construction to show cause why the building or work shall not be removed, altered or pulled down; and if sufficient cause is not shown, the 2nd respondent has to remove, alter or pull down the building or work and collect the expenses from the said person.

After passing of order under Section 452(2) of the Act, the demolition has to be undertaken invoking Section 636 of the Act.

11. Except merely stating that certain notices have been issued to respondent Nos.3 and 4, the 2nd respondent has not filed copy of even a single notice issued to respondent Nos.3 and 4.

12. The construction is said to have been completed in the year 2001 but till date except sending some alleged notices, nothing has been done by 2nd respondent. The 2nd respondent has also not taken any action on the legal notice dt.23-08-2006 issued by petitioner till today.

13. It is thus clear that the 2nd respondent has abdicated its responsibility in ensuring that the constructions made by respondent Nos.3 and 4 are in accordance with the sanctioned plan and in removing the constructions which are in deviation of the sanction plan more particularly in parking area. Merely prosecuting the 4th respondent and collecting a fine of Rs.300/- from him does not absolve the 2nd respondent from pulling down or removing the deviations from the sanctioned plan in the building constructed by respondent Nos.3 and 4. The dismissal of the case filed by petitioner Association against

respondent Nos.3 and 4 in the Consumer Forum has no bearing on the obligation of 2nd respondent to ensure compliance by respondent Nos.3 and 4 with the provisions of the Act.

14. Therefore, the Writ Petition is allowed and 2nd respondent is directed to remove the illegal and unauthorized constructions made by respondent Nos.3 and 4 in the above premises more particularly in the parking place within four (04) weeks from the date of receipt of a copy of this order. For failing to discharge its statutory duty and ensure compliance with the provisions of the Act, the 2nd respondent shall also pay costs of Rs.5,000/- (Rupees Five Thousand only) to petitioner within four (04) weeks from today.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 01-03-2016

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[\[1\]](#) 1998(6) ALT 540