THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.40492 OF 2016

DATED : 28.11.2016

Between :

M/s.Stone Age, a Partnership Firm,
At D.No.8-3-833/3, Plot No.3,
Kamalapuri Colony, Phase-I,
Hyderabad –500 073,
Rep., by its Partner, Sri Asad Ali Khan
S/o.Sri Layaq Ali Khan,
Aged about 36 yrs, Occu : Business,
R/o.H.No.7-1-28/1/A, Leelanagar,
Ameerpet, Hyderabad & another.

.. Petitioners

And

The State of Telangana,
Rep., by its Principal Secretary,
Municipal Administration,
Secretariat Buildings, Hyderabad & others.

.. Respondents

This court made the following :

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ORDER :

In this writ petition, petitioners challenge the notice issued by the Municipal Corporation under Section 452 (2) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the GHMC Act').

2. The petitioners are the tenants of the subject premises. The respondent-Corporation received complaint from the owner of the subject premises, who are 4th & 5th respondents. Initially notice was caused under Section 461 of the GHMC Act, asking the owner of the premises to show cause why action should not be taken in accordance with the provisions of Section 461 of the GHMC Act, on the alleged illegal construction made in the subject premises. Petitioners also responded to the said notice and in response given by the petitioners, they also referred to interse controversy between the petitioners and owner of the building. The explanation in the form of legal notice was considered and by the letter dated 10.11.2016 the Deputy Commissioner GHMC, informed the petitioners that GHMC is not concerned with the interse disputes between the owner and tenant and it is only concerned with the illegal and unauthorized construction made on the subject property. On the same day, a notice under Section 452 (2) of the GHMC Act, is also issued calling upon the petitioners to submit their explanation which notice is under challenge in this writ petition.

3. Heard learned counsel for the petitioners and learned Standing counsel for the Municipal Corporation, on the issue of maintainability of subject notices. Sri M.Satish Kumar, entered appearance on behalf of the 4th & 5th respondents.

4. Learned counsel for the petitioners submit that when once Section 461 of the GHMC Act power is invoked, the Corporation ought to have served such notice on the petitioners calling for their explanations. He would further submit that once the provision under Section 461 of the GHMC Act, was initiated and without following the procedure, as required under Section 452 (1), notice under Section 452 (2) of the GHMC Act, could not have been issued and even this notice was not addressed to the petitioners. Whereas, provision under Section 452 mandates causing notice on the occupier of the premises who is alleged to have erected. Whereas, according to the owner of the property, petitioners undertook construction of alleged illegal construction. Therefore, in terms of the provision contained in Section 452 (1) of the GHMC Act, petitioners should have been served notice.

5. Learned Standing counsel submits that no record is available to show that after issuance of Section 461 notice, a notice under Section 452 (2) of the GHMC Act, was issued following procedure of Section 452. He would submit that since there is an interse dispute as to who constructed the building, the Corporation has addressed a notice to the owner of the property as well as marked a copy to the tenant and their explanations were considered.

6. The reply given to the explanation filed by the petitioners in response to the notice under Section 461 does not deal specifically as to how the alleged illegal construction is made. The Municipal Corporation ought to have referred to the building permission granted by the Corporation to point out to the petitioner that such construction made on the first floor is contrary to the building permission. Whereas, order is silent and purport of the action taken, only reflects that the action was initiated on the ground of alleged illegal construction on the first floor.

7. There is no explanation forthcoming as to why having initiated proceedings under Section 461 of the GHMC Act, straight away municipal corporation resorted to provision under Section 452 (2) of the GHMC Act. Whereas when once procedure under Section 461 is initiated the question of going back to Section 452 (2) proceedings does not arise. On the contrary, if Section 452 is resorted to, the notice has to be served on the person who is alleged to have undertaken construction and according to the owner of the subject premises, it is the petitioners who undertook the construction on the first floor.

8. Having regard to these infirmities, I am of the considered opinion that matter may be remitted to the stage of consideration of explanation of the petitioners.

9. Learned counsel for the petitioners as well as learned Standing counsel would agree for such course and learned standing counsel would submit that time frame may be fixed for undertaking such exercise.

10. Having regard to these submissions, the petitioners are granted liberty to submit detailed explanations within three days from today or before 03.12.2016, with reference to the alleged unauthorized construction and shall appear before the Deputy Commissioner, Town Planning Section, Circle-10 B, Khairthabad, Hyderabad, on 06.12.2016 at 11.00 a.m. The Deputy Commissioner, shall hear the petitioners in person and after considering the submissions as well as the submissions made in the explanations filed, shall pass orders within a period of one week thereafter. Till the orders are passed as directed above, no coercive action shall be taken against the petitioners. If the petitioners did not file explanations nor appear before the Deputy Commissioner on 06.12.2016, it is open to the Deputy Commissioner, to proceed and to take appropriate action as warranted by law, without further notice.

11. It is made clear that there is no adjudication of interse dispute or the claim of the owner of the property and all issues agitated in the writ petition are left open. It is also open to the respondents 4 and 5 to appear before the Deputy Commissioner on 06.12.2016 and to make their submissions and raise all objections, as warranted by law.

12. With the above observations, the Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

28th November, 2016
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