

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.45144 of 2016

ORDER:

The petitioner is a builder/developer undertaking the construction of buildings in the name of M/s.Kanchana Constructions, a partnership firm. A Development Agreement-cum-GPA was entered with the owner of the premises situated in plot Nos.11 and 12, Nowroji Road, Maharani-peta, Visakhapatnam. Later on the share of the owner was also purchased by the petitioner under a registered sale deed dated 17.12.2012. An application was made to the second respondent for construction of the building and the same was accorded on 26.05.2012. The construction was completed by 05.05.2014 and after completion of the construction, a notice was issued under Section 455 (1) of the Hyderabad Municipal Corporation Act, 1955. After receipt of the said notice, the second respondent inspected the building and issued the occupancy certification by order dated 10.06.2014. The petitioner itself admits that after issuance of occupancy certificate, they constructed fifth floor consisting of one room, toilet and dressing cabinet with built up area of 375 square feet with the roof height of 7 feet without obtaining any permission. The said construction was completed in October, 2014. After completion of the construction, the Government of Andhra Pradesh issued the Andhra Pradesh Regulation and Penalization of Buildings Constructed Unauthorisedly and in Deviation of the Sanctioned

Plan Rules, 2015, in G.O.Ms.No.128, dated 22.05.2015, and the said Rules were made applicable for the buildings constructed from 01.01.1985 to 31.12.2014. The petitioner submitted application on 27.07.2015 seeking regularization and penalization of the said fifth floor. He paid the penal charges also. However, it appears that the third respondent approached the Lokayuktha regarding the unauthorized construction and the Lokayuktha appears to have passed an order on 25.07.2016 directing the second respondent to take appropriate action after hearing both the parties. The second respondent ultimately passed an order in Rc.No.11025/2016/ACP-III, dated Nil.11.2016 rejecting the application for regularization of unauthorised construction made in the fifth floor of the building. Against the said order, the petitioner preferred an appeal to the first respondent on 19.12.2016 and also filed the present Writ Petition.

In view of availing the appellate remedy provided under G.O.Ms.No.128, dated 22.05.2015, this Court is not inclined to entertain the present Writ Petition.

The appellate authority constituted under G.O.Ms.No.128, Municipal Administration and Urban Development (M1) Department, dated 22.05.2015, shall entertain the appeal preferred by the petitioner on 19.12.2016 and decide the same in accordance with law, within a period of three months from the date of receipt of a copy of this order. Till such time, no

further action with regard to demolition of the said unauthorized construction shall be taken.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

23.12.2016
vs

(A.RAMALINGESWARA RAO, J)

