

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.3682 of 2006

ORDER:

The petitioner is a practicing advocate in Nellore. He entered into an agreement with second respondent for purchase of flat No.101 in Sri Sai Residency, Nellore, when he represented that he got permission for construction of ground + three floors. Later on, the petitioner came to know that the second respondent obtained permission only for construction of ground + two floors. When the second respondent was constructing 3rd and 4th floors without any permission, the petitioner brought to the notice of the authorities about the unauthorized construction. When there was no response from the authorities, the petitioner filed W.P.No.497 of 2006 for taking appropriate action against the second respondent.

When the matter was taken up for consideration before the Court, learned counsel for the Municipal Corporation of Nellore submitted that the second respondent constructed the building in accordance with permit and there are no deviations and, on the basis of the said representation, the Writ Petition was closed giving liberty to take action in case of deviations. However, the first respondent, Municipal Corporation of Nellore, issued notice to the second respondent on 20.01.2006 pointing

out certain deviations and, when there was no response from the second respondent, they initiated action for removing deviations. The first respondent, instead of removing unauthorized constructions made in 3rd and 4th floors, tried to demolish the east wall, of balcony in front of the flat of the petitioner, which clearly demonstrates that the first respondent wanted to take action against the petitioner for making complaint. The petitioner states that he did not make any unauthorized constructions and, in spite of the same, notice was issued on 20.01.2006 under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') as applicable to the Nellore Municipal Corporation Act. Hence the present Writ Petition was filed.

This Court, by order dated 27.02.2006, passed an order holding that, since notice dated 20.01.2006 was not addressed to the petitioner, the first respondent shall not demolish any portion of flat No.101 but, in respect of other deviations, they can take action.

Even after ten years, no counter affidavit is filed by the respondents.

The averments, made in the affidavit filed in support of the Writ Petition, are that the petitioner purchased flat No.101 in Sri Sai Residency constructed by the second respondent. It appears that the second respondent made

unauthorized constructions in 3rd and 4th floors though permission was for ground + 2 floors. However, in the guise of demolishing unauthorized constructions and when the first respondent demolished a portion of the wall of the petitioner's flat, he approached this Court.

Learned counsel for the petitioner states that no notice was issued under Section 452 of the Act as applicable to the Nellore Municipal Corporation Act.

Issuance of order under Section 636 of the Act is bad. Under the circumstances, the Writ Petition is disposed of giving liberty to the petitioner to submit his explanation, if any, with regard to the alleged deviations in respect of flat No.101, by treating the impugned notice as notice under Section 452 of the Act as applicable to the Nellore Municipal Corporation Act. The first respondent is directed to consider the same in accordance with law before taking further action. Till such time, no part, of flat No.101 of the petitioner, shall be demolished.

The Writ Petition is, accordingly, disposed of.

Miscellaneous applications, if any, shall also stand disposed of. No order as to costs.

A. RAMALINGESWARA RAO,J

Date:08.11.2016
 usd

