

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.19822 of 2012

ORDER:

Heard the learned counsel for the petitioner, Sri N.Ashok Kumar, learned Standing Counsel for 1st respondent and the learned Government Pleader for Municipal Administration and Urban Development appearing for 3rd respondent. None appears for 2nd respondent even though the name of Sri MAK Mukheed, learned counsel is printed in the cause list.

2. The petitioner had filed this Writ Petition questioning the order in letter No.17621/ACD/C5/GHMC/2012 dt.11-04-2012 of 1st respondent served on the petitioner on 20-06-2012.

3. The petitioner is the Apex Body of Indian Ahmadi which owns and maintains the Ahmadiya Mosque at Afzalgunj, Hyderabad bearing H.No.15-5-4 to 7, 848 and 849.

4. According to the petitioner, the structure in question was donated in the year 1937 to the petitioner under registered document. The vendor had purchased the structure from the then Hyderabad City Improvement Board in an open auction. Even prior to the purchase by the petitioner's vendor, there was already a structure therein and the same was being used by the Ahmadi for

their prayers and spiritual meetings. Later, when the existing Mosque became dilapidated, the petitioner made an application to the Greater Hyderabad Municipal Corporation, Hyderabad and obtained permission dt.19-02-1977 for the construction of Mosque. The building was accordingly completed and was being used as a prayer hall and place for spiritual meetings.

5. In due course of time, the petitioner felt that the building needed repairs since some portions had become dilapidated and incapable for use for prayer. The petitioner alleges that when the petitioner sought to make certain repairs, 2nd respondent reported to 1st respondent and staff of 1st respondent obstructed repair work.

6. The petitioner approached 1st respondent for permission on 14-03-2012 to carry out repairs. By the impugned order dt.11-04-2012, 1st respondent rejected the same on two grounds:

(a) that the petitioner did not obtain No Objection Certificate (NOC) from the Wakf Board authority i.e. 2nd respondent and

(b) that the proposed elevation comes under road margin.

7. The petitioner contends that the first reason

ought to be rejected since 2nd respondent is inimical to the sect of *Ahmadiyas* and it treats them as non-muslims and 2nd respondent would never issue NOC to the petitioner. Learned counsel for the petitioner also placed reliance on the proceedings of the 35th meeting of 2nd respondent-Wakf Board held on 18-02-2012 wherein the 2nd respondent decided that issues relating to *Ahmadis* and structures owned and administered by *Ahmadis* cannot be administered by 2nd respondent. This is not disputed by 1st respondent. Therefore, this ground of rejection of petitioner's application to make repairs cannot be sustained.

8. The 2nd ground mentioned in the impugned order is that the proposed elevation is come under road margin.

9. Learned counsel for the petitioner contends that the Mosque itself is situated in the first floor and not on the ground floor and that the existing elevation is far away from the road margin and away from the foot-path. It is further pointed that there is a temple existing between the Mosque and the road and therefore, the plea that the proposed elevation is coming under road margin is absurd. Learned counsel for the petitioner contends that this reason is nonexistent because there is no such proposed elevation and that already dilapidated parts of

the building are only intended to be repaired. It is specifically contended that 1st respondent had been influenced by 2nd respondent who is inimical towards petitioner and the action of the 2nd respondent for refusing permission to make repairs to the existing structure in the occupation of the petitioner cannot be sustained and that it is arbitrary and contrary to the provisions of the Act.

10. In the counter affidavit filed by 1st respondent, it is reiterated that the proposed elevation would come in road margin. The other allegations made by the petitioner are denied.

11. This Court on 16-02-2016 directed 1st respondent to again inspect the property and file a report. The report filed by 1st respondent through its Standing Counsel indicates that the structure in question consists of ground, mezzanine and first floors and some portion on the eastern side of the building which was dilapidated had been removed by the petitioner and the same had been covered with blue sheets and there is no new construction work in progress. Photographs were also filed. It is mentioned therein that the elevation in the above premises on its eastern side was projected into the road margin.

12. Learned Standing Counsel for 1st respondent has stated that the petitioner intends to extend the

structure further into the road margin which fact is categorically denied by the learned counsel for the petitioner. The learned counsel for the petitioner states that the petitioner undertakes not to extend the existing structure into the road margin.

13. A look at the photographs filed by the learned Standing Counsel does not indicate that any projection has been made at present by the petitioner into the road margin and what is apparent therefrom is that blue sheets have been placed on the 1st and 2nd floors within the existing structure only. It also cannot be disputed that there is a temple between the road and existing structure.

14. In this view of the matter, I am of the opinion that the petitioner cannot be prevented from making repairs within the existing structure in any manner by the respondents and any such interference by 1st respondent would be illegal and arbitrary particularly since it is the case of the petitioner that portions of the structure had become dilapidated. Unless the repairs are made, it may endanger the lives of devotees who are inside the temple and offering prayers or even people walking on the ground floor and pavement.

15. Therefore, placing on record the undertaking given by the learned counsel for the petitioner that the petitioner would not make any construction or addition

extending the existing structure and would confine repairs and construction too within the existing structure, direction is given to 1st respondent to permit the petitioner to make repairs within one week from the date of receipt of a copy of this order.

16. The Writ Petition is allowed as above. No costs.

17. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-02-2016

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