

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.40221 & 40268 OF 2016

DATED : 28.11.2016

Between :

Setty Chandra Shekar S/o.Setty Buchanna,
Aged 58 yrs, Occu :Business,
R/o.H.No.1-3-160/16, Rajendhranagar,
Mahabubnagar, Mahabubnagar District
Telangana State & another.

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Petitioners

And

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

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Respondents



This court made the following :

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COMMON ORDER :

Petitioners are aggrieved by the order dated 13.09.2016, rejecting application for regularizing the unauthorized/illegal constructions made by them, on the shortfalls noticed by the competent authority as listed out in the said proceedings.

2. When the matters are taken up for consideration, learned Standing counsel and the learned Government Pleader raised objection on the maintainability of the writ petitions, as the petitioners have an effective and efficacious remedy by way of appeal under Rule 11 of Telangana Regularisation of Unauthorisedly constructed buildings and buildings constructed in deviation of the sanctioned plan Rules, 2015 (for short 'the Rules'), notified vide G.O.Ms.No.152 dated 02.11.2015.

3. Rule 11 of the Rules reads as under :

“Any applicant aggrieved by an order passed by the Competent Authority under Rule 6, may prefer an appeal to the Committee constituted by the Government, within thirty days from the date of receipt of the order provided the applicant has paid the necessary charges and submitted documents as specified in Rule 3 and 5 of these rules.”

4. Learned Government Pleader produced orders of the Government in G.O.Ms.141, dated 17.05.2016, whereby, the appellate authority is constituted.

5. It is not the case of the petitioners that the appeal provision incorporated in the Rules is not effective or efficacious remedy.

Hence, this Court is not inclined to entertain the writ petitions, when the petitioners have an effective and efficacious remedy created by the statute, whereunder application for building regularization is processed.

6. The order challenged by the petitioners is issued on 13.09.2016. According to Rule 11 of the Rules, appeal has to be preferred within thirty days from the date of receipt of the order of rejecting the application.

7. At this stage, learned counsel for the petitioners would submit that the petitioners may be granted 15 days time to prefer appeal as provided in Rule 11 of the Rules and till the appeal is preferred, the respondents may be directed not to take any coercive steps against the petitioners.

8. Learned Standing counsel would submit that under the guise of application for building permission, the petitioners are undertaking further construction.

9. Having regard to these submissions and in view of the earlier undertaking filed before the Municipality, the respondent-Municipality shall not take any coercive action against the petitioners for a period of 15 days from today. However, it shall ensure that no further construction can be taken up by the petitioners till their appeal is considered and disposed of by the appellate authority.

10. Since the time stipulated under Rule 11 of the Rules, is already lapsed, liberty is granted to the petitioners to avail the remedy of appeal and also to file an application for condonation of

delay in not filing the appeal within time. As and when such application is filed, the same may be considered positively in view of the subject matter of the issue, and appropriate orders be passed by the appellate authority.

11. Leaving it open to the petitioners to avail the remedy of appeal as provided under Rule 11 of the Rules, these writ petitions are dismissed with the above observations. However, There shall be no order as to costs.

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

28th November, 2016

Note : Issue c.c. in two days.

B/o.
Rds

P.NAVEEN RAO,J

