

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.35828 of 2016

ORDER:

The writ petition is filed questioning the action of the respondents 1 to 3 in issuing the proceedings dated 17.09.2016 under Section 452 (2) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, "the Act") to the petitioner without having any jurisdiction.

It is the case of the petitioner that the impugned proceedings issued by the respondents 1 to 3 suffers from totally non application of the mind and non consideration of the explanation submitted by the petitioner at the instance of the respondents 4 and 5.

Heard the learned counsel for the petitioner, learned Government Pleader for the Municipal Administration and Urban Development, Smt P. Lakshmi, learned counsel for the respondents 2 and 3 and Sri V. Brahmaiah Chowdary, learned counsel appearing for the respondents 4 and 5.

As can be seen from the material on record that a notice under Sections 452(1) & 461(1) of the Act was issued to the petitioner on 23.08.2016, alleging that the compound wall constructed at Prashanth Nagar, situated at Waddepally is contrary to the provisions of the Act and byelaws made there under and as to why the same shall not be directed to be removed as the same is un-authorised construction. Petitioner submitted his explanation on 16.09.2016 stating that there are civil suits pending between the petitioner and the respondents 4 and 5. Petitioner had also submitted the documents relating to the suit in O.S.No.1177 of 2015 pending before the II Additional Junior Civil Judge, Warangal. Thereafter, the impugned order appears to have been passed by the respondents 1 to 3 rejecting the request made by the petitioner, which reads as under:

“Whereas, it has come to the notice of the undersigned that one Smt Kanakala Thirupathamma has made the following deviations to the sanctioned plan/construing the building un-authorisedly in Pr.No.24-7-204, situated at Darga Road, contrary to the provisions of HMC Act and Bye-Laws made thereunder as given below----

Whereas, in the ref. 2nd cited a show cause notice under Section 452(1) of HMC Act was issued to him/her to show cause why the portion of construction made by him/her in contrary to the sanctioned plan/unauthorisedly in Pr.No.24-7-204, situated at Prashanth Nagar should not be removed, altered or pulled down.

Whereas, in the ref.3rd cited Sri/Smt Kanakala Thirupathamma have submitted reply to the above said show-cause notice stating that-----

Therefore, the request made by Sri Kanakala Thirupathamma is hereby rejected.”

At the outset, the impugned order made is in relation to the premises bearing Door No.24-7-204, Darga Raod, whereas in the first para it was mentioned as “24-7-204, situated at Darga Road and in 2nd para, it was mentioned as 24-7-204, situated at Prashanth Nagar”. The impugned order also does not specify any reasons for making an order with respect to the property in Darga Road. Inasmuch as the order having been made for a property in Darga Road not in relation to the property in Prashanth nagar, the same is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the proceedings dated 17.09.2016 issued by the 3rd respondent. However, liberty is given to the respondents 1 to 3 to pass appropriate orders pursuant to the notice dated 23.08.2016 after considering the explanation submitted by the petitioner, within a period of three weeks from the date of receipt of copy of the order. Till such time, the fresh orders are passed, the compound wall which is said to have been

constructed by the petitioner at Prashanth Nagar situated at Waddepally shall not be demolished. No order as to costs.

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

CHALLA KODANDA RAM,J

24.10.2016.

Note:

Issue CC forthwith.

B/o.

GK



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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24.10.2016

Gk