

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.13201 of 2012

Order:

The petitioner states that he is the owner and possessor of the property admeasuring 213 sq. yards bearing House No.23-3-120, situated at Sultan Shahi, Hyderabad. He wanted to demolish the old house for the purpose of constructing a new house and accordingly he submitted an application seeking permission for construction of building consisting of Ground + First Floor and the same was sanctioned vide permit dated 29.11.2011. Since he noticed a pit while making the construction at a depth of 4 feet he started construction from 4 feet below the ground level. When he raised slab for the ground floor, the first respondent issued a notice on 18.01.2012 under Sections 452(1) and 461(1) of the Hyderabad Municipal Corporation Act (for short 'the Act') alleging that the petitioner raised the cellar in the property in violation of the sanctioned plan. The petitioner submitted a reply on 23.01.2012 stating that it is not a cellar but since a pit was found at a depth of 4 feet the construction was started from that depth. The respondent issued a notice on 02.02.2012 directing the petitioner to remove the 4 feet construction below the ground level and the petitioner came to know that the neighbour filed W.P.No.30612 of 2011 against the construction. In view of the said circumstances, the petitioner decided to close the cellar portion and submitted a reply on 06.02.2012 seeking 15 days time to close the construction. When he was taking steps to close the construction below the ground level another notice dated 29.02.2012 was issued to remove the construction below the ground level in three days. Accordingly, he closed the construction. After closing the cellar portion as aforesaid and was proceeding with the

construction, he received another notice dated 06.03.2012 under Section 452(2) of the Act alleging some deviation and not maintaining setbacks as per the sanctioned plan. The petitioner submitted a representation on 20.03.2012 stating that many buildings in the old city area were not having required setbacks and requested for dropping further action. But, the respondent officials came to the property on 18.04.2012 and served a notice under Section 636 of the Act, challenging which the present Writ Petition was filed.

The relevant portion of the impugned order reads as follows.

“The Hon’ble A.P. High Court has given orders in W.P. vide reference 1st cited, to consider the reply by the writ petitioner dated 20.03.2012 and accordance appropriate order with law. In this regard your reply dated 20.03.2012 is re-exercise and found that unsatisfied and incorrect as mentioned below.

- 1) You have unauthorisedly construction of Cellar partly towards the southern side of your property, the half portion which is violated against the sanctioned plan which is permitted in File No.70808/18/11/2011 in Permit No.6462/DC/SZ/Cir.4/2011 for construction of Ground and First Floor only.
- 2) You have proceeding Ground floor construction without maintaining all-round setback as mentioned below:

Side	Set-back as per sanctioned	Set-back as per site	Deviation	Remarks
Front	3.0 M	Nil	3.0 M	Full deviation
Rear	1.0 M	1M to 0	0 to 1M	You have mentioned 38'.0" but remaining 19'.0" without maintained 1 M set-back
Side 1 (North)	3.0 M	Nil	3.0 M	Full deviation
Side 2 (South)	1.0 M	Nil	1.0 M	Full deviation

The above mentioned deviations this office has served notice U/s.636 of HMC Act, and you have failed to maintained all-round set-back and unauthorized construction of partly Cellar which is against the G.O.Ms.No.623, dated 01.12.2006.

As per the Hon'ble Court orders dated 19.04.2012 to considering the reply dated 20.03.2012. In this regard your reply has been re-examined and found that you have not followed the rules and regulations in the above para, and the Hon'ble A.P. High Court has given orders to you to construct in accordance with sanctioned plan.

Therefore, under the provisions of Section 636(1) of HMC Act you are hereby directed to remove the above mentioned unauthorized construction and deviated portion within (3) days, failing which same will be removed by the GHMC, and the expenses thereof will be recovered from you."

Learned counsel for the petitioner submits that the cellar portion was already closed, whereas with regard to setbacks the petitioner submitted an application for regularization and the counsel for the respondents is unable to deny as no counter affidavit is filed on behalf of the respondents when the matter is taken up for consideration.

In the circumstances, this Writ Petition is disposed of directing the respondents to take action as per the orders of the Division Bench of this Court in the Public Interest Litigation, which was filed challenging the scheme of regularization of unauthorized constructions, in the following terms.

If the application of the petitioner is pending consideration, the same can be processed as per the directions of the Division Bench of this Court and appropriate action can be taken in accordance with the said directions. If no application of the petitioner is pending or if the application of the petitioner is rejected, it is open to the respondents to take appropriate action in accordance with law.

There shall be no order as to costs. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 01.11.2016
Nsr

