

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**

**WRIT PETITION No.15959 of 2016**

**ORDER:**

Petitioner has filed this writ petition challenging the order, dt.26-04-2016 under Section 636 of H.M.C. Act, 1955, by 2<sup>nd</sup> respondent.

The petitioner claims to be the owner of an extent of 153.33 Sq. Yards in Sy.No.686/A at Jangan Shivar, Ramagundam Mandal, which according to the petitioner is called 'new vegetable market' area of Godavarikhani Town, Ramagundam Mandal, Karimnagar District.

According to the petitioner, two registered sale deeds were executed in his favour in the year 1994 in respect of the said land. The petitioner claims to have made application for permission for construction on 03-12-2007 to the 2<sup>nd</sup> respondent. Petitioner contends that after waiting for a reasonable time, they commenced construction with oral permission from the staff of the 2<sup>nd</sup> respondent. It is not in dispute that the petitioner has constructed ground + three floors allegedly in this property.

Notice under Sections 452(1) and 461(1) of HMC Act, 1955 was issued by the 2<sup>nd</sup> respondent on 15-03-2016. Learned counsel for the petitioner states that the said notice was not served on the petitioner. Subsequently, notice under Section 452(2) of HMC Act, 1955 was issued to the petitioner on 04-04-2016. Petitioner submitted a reply on 09-04-2016 to the 2<sup>nd</sup> respondent in which he stated that he constructed three floors prior to commencement into

force of Building Regularization Scheme notified by the Government in G.O.Ms.No.152, dated 02-11-2015 by the cutoff date on

28-10-2015 fixed therein. He also claimed that he filed O.S.No.72 of 2008 before the Junior Civil Judge, Peddapalli for injunction against the 2<sup>nd</sup> respondent who he claims interfered with his possession and enjoyment of the property. It is not disputed that the said suit has been dismissed for default. It is the claim of the petitioner that an application in I.A.No.379 of 2015 is pending consideration before the said Court for restoration of suit.

Be that as it may, the 2<sup>nd</sup> respondent after considering the petitioner's explanation, dt.09-04-2016 passed the impugned order No.G1/UC/438/2016, dt.26-04-2016 under Section 636 of HMC Act, 1955 rejecting the petitioner's explanation that he made construction of three floors after 28-10-2015. He pointed out that the notices had been issued to the petitioners to stop construction even at the stage of construction, that the petitioner had applied for regularization under B.R.S. only for ground floor and not of other three floors; and pendency of such application does not mean that permission for regularization has been granted. Assailing this order, this Writ petition is filed.

Learned counsel for the petitioner contends that the petitioner had invoked the deemed permission provision in GHMC Act, 1955 (Section 437), but the petitioner has not placed on record the application allegedly made by the petitioner for making construction on 03-12-2007 and it is not known whether he applied for permission for these three floors in question or not.

Petitioner contends that the application for B.R.S. made under G.O.Ms.No.152 referred supra is pending consideration and therefore, the three floors erected by the petitioner cannot be demolished in the meantime.

Learned Standing Counsel appearing for the 2<sup>nd</sup> respondent states that the petitioner had applied under the B.R.S. scheme for regularization of a residential house bearing No.16-2-275/7 in Sy.No.668 at Shivaji Nagar, Godavari Khani only in respect of ground floor of 128.19 Sq. meters under G.O.Ms.No.152, dated 02-11-2015 and that there is no application for regularization of the constructions made in 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors.

No reply affidavit is filed by the petitioner disputing this contention.

From the above, it is clear that the petitioner has sought regularization of a structure consisting of ground floor only in Sy.No.668 but he has filed this writ petition in respect of three floors constructed in Sy.No.686/A apart from the ground floor.

Since there is admittedly no permission for making construction of these three floors, and since the petitioner had not applied for regularization of construction of these three floors under B.R.S. scheme notified vide G.O.Ms.No.152, dt.02-11-2015, the petitioner cannot have any grievance with regard to the impugned order.

Therefore, the petitioner is granted four (4) weeks time from today to remove the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors in the subject premises

voluntarily. If not, the 2<sup>nd</sup> respondent shall execute its order No.G1/UC/438/2016, dt.26-04-2016 and demolish the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors in the subject property.

The writ petition is dismissed with the above direction.

Miscellaneous Petitions pending, if any, shall stand closed.  
There shall be no order as to costs.

**M.S. RAMACHANDRA RAO, J**

July 28, 2016

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**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**

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