

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.39964 & 40051 OF 2016

Dated:21.11.2016

Between:

Smt. C. Bhagya Laxmi, W/o. C.Venugopal,
Aged 38 years, Occ: Housewife,
R/o.Plot No.70, Ward No.8, Block No.1,
Udaynagar Colony, Karmanghat,
Saroornagar Mandal, Ranga Reddy District .. Petitioner

And

The State of Telangana, rep., by
its Principal Secretary, Municipal
and Urban Development Department,
Secretariat Buildings, Hyderabad, and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.39964 & 40051 OF 2016

COMMON ORDER:

The petitioner claims to be the owner of house plot bearing No.70, admeasuring 200 sq. yards, forming part of Survey Nos.166 to 168, 170 to 173, 177 and 181, situated at Ward No.8, Block No.1, Udaynagar Colony, Karmanghat Village, Saroornagar Revenue Mandal, Ranga Reddy District. She claims to have applied for building permission for construction of residential house with stilt + two upper floors and obtained permission on 01.10.2016. Alleging that the petitioner violated the building permission granted to her, show cause notice dated 24.10.2016 under Section 452 (1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') was issued. As no explanation was submitted by the petitioner, notice under Section 452 (2) of the Act was issued on 07.11.2016. Challenging the said notice, W.P.No.39964 of 2016 is filed. After filing the said Writ Petition, the respondent – Corporation issued notice, dated 16.11.2016, under Section 636 of the Act. Aggrieved thereby, the petitioner filed W.P.No.40051 of 2016.

2. Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration appearing for respondent No.1 and learned Standing Counsel for Greater Hyderabad Municipal Corporation (GHMC) appearing for respondents 2 and 3.

3. Learned counsel for the petitioner would submit that notice dated 07.11.2016 was served on the petitioner on 09.11.2016. Immediately, the petitioner filed explanation to the

said show cause notice, which was received by the respondent – Corporation on 16.11.2016. On the same day, notice under Section 636 of the Act was issued to the petitioner. The notice holds that since no reply was given by the petitioner in response to the notices, dated 24.10.2016 and 07.11.2016, notice under Section 636 of the Act was issued. He would submit that the reply was already filed by the petitioner and without considering the said reply/explanation, final orders could not have been passed and on that ground alone, the notice dated 16.11.2016 is liable to be set aside. He would also submit that the deviations pointed out are very minor and the Government Orders, more particularly G.O.Ms.No.168, dated 07.04.2012, provides for regularisation of such deviations and they should have been considered before taking coercive action.

4. Learned Standing Counsel for GHMC, on instructions, would submit that though the explanation of the petitioner was received by the Inward Section on 16.11.2016 but by that time, the decision was taken by the Deputy Commissioner, GHMC, Circle No.III, the 3rd respondent, it was not placed before him and therefore based on the record placed before him, he passed the impugned proceedings.

5. Since, admittedly, the explanation was filed by the petitioner and the same was not considered, in the interests of justice, I am of the considered opinion, that the matter requires to be remitted to the 3rd respondent for reconsideration of the issue from the stage of issuance of show cause notice, dated 07.11.2016, issued under Section 452 (2) of the Act. At this stage, learned counsel for the petitioner seeks leave of the Court to file

supplementary explanation, in support of the explanation already filed, raising additional pleas regarding entitlement of regularisation.

6. Matter is remitted to the 3rd respondent. The petitioner is granted liberty to file additional explanation within a period of one week from today. If such explanation is filed, the 3rd respondent shall consider the same along with the explanation already filed. The 3rd respondent is directed to put on notice the complainant, examine the objections filed by the petitioner and the complainant and pass a reasoned order, which shall be communicated to the petitioner as well as to the complainant. It is open to the 3rd respondent to pass orders based on the original explanation and the objections of the complainant, if no additional explanation is filed by the petitioner within one week from today. Till a decision is made, as directed above, the respondent – Corporation shall not take any coercive action against the petitioner. It is also made clear that the petitioner shall not make any further construction until a decision is taken by the 3rd respondent on the explanations filed by the petitioner and the complainant, pursuant to the notice dated 07.11.2016 issued under Section 452 (2) of the Act.

7. With the above observations and directions, these Writ Petitions are disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, filed in these Writ Petitions shall stand closed.

P. NAVEEN RAO, J

Date: 21.11.2016

Note:- Issue C.C. in three (3) days.

(B/o)
KH