

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 18367 of 2016

ORDER:

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Questioning the proceedings dated 06.05.2016 issued by the Director of Fire Services, Andhra Pradesh, Hyderabad, wherein the petitioner has not obtained permission from the Hon'ble High Court for considering the application submitted by him for grant of "No Objection Certificate" for occupancy of the premises bearing Dr.No.1/100 and 1/100-1, George Reddy street, Yerramukkapalli, Kadapa city, Y.S.R. District, the present Writ Petition is filed.

2. After completing his Post-Graduation in Orthopedic, the petitioner entered into a lease agreement with one Metikala Srinivasulu for taking the premises referred to above on lease along with complete Hospital equipment to run Super Speciality Hospital. Since the owner of the building did not adhere to the provisions of the Section 13 of the A.P. Fire Services Act, 1999, the petitioner submitted an application for issuance of "No Objection Certificate" with respondent No.2 herein duly enclosing the requisite challan. The Inspection Committee is said to have visited the premises and submitted a report on 05.05.2016, pursuant to which, the respondent No.2 passed the impugned order insisting the petitioner to obtain permission from the court for considering the application submitted by him for issuance of NOC; that no provisional NOC was obtained at the time of applying for building plan approval and the Writ Petition No.26365 of 2005 is pending for adjudication insofar as the buildings which have been constructed without adhering to the fire safety measures. Challenging the same, the present Writ Petition is filed.

3. Learned counsel for the petitioner submits that since the height of the building is 12.48 meters, as per the building plan

approved by the Kadapa Municipal Corporation and also as per the report submitted by the Inspection Committee, the said building will not fall under the category of high raise building as defined under Paragraph 2.25 of National Building Code. Hence, obtaining no objection certificate would not arise. He further submits that in view of G.O.Ms.No.154, dated 30.03.2007 and G.O.Ms.No.246 dated 19.03.2008 the respondent No.2 ought to have considered the same instead of directing the petitioner to approach the Court.

4. The 3rd respondent filed counter disputing the averments made in the affidavit filed except to the extent admitted by him. It has been averred that the petitioner herein failed to obtain a provisional No Objection Certificate from the competent authority which is mandatory for issuance of "No Objection Certificate" for occupancy as per the provisions of Fire Service Act. It has been further stated that there are deficiencies in open space around the building and as such No Objection Certificate for occupancy could not be issued. In paragraph 7 of the counter it has been specifically stated that the Regional Fire Officer, Southern Region, Hyderabad vide Rc.No.585/RFO/SR/2016 dated 06.05.2016 directed the petitioner herein to comply with certain deficiencies as per the provisions of Common Building Rules 2007. Thus, it is contended that without rectifying the said deficiencies, the petitioner should not have invoked the jurisdiction of this Court.

5. It is to be noted that pursuant to a news item published in Times of India (daily newspaper) dated 07.12.2005 under the title "your flat can be a towering iferno", which appeared in the the Writ Petition No.26365 of 2005 came to be taken up. After hearing all the concerned, a Division Bench of this Court by its order dated 24.01.2006 observed as under :

"1) In future Municipal Corporation of Hyderabad, Hyderabad

Urban Development Authority and other competent authorities shall not sanction any building plan for construction of any building, including multi-storied building unless the applicant has obtained No objection certificate from the authority concerned where the provisions of A.P. Fire Services Act, 1999 and Multi-storied Building Regulations are applicable. If any authority/Officer of these organizations give permission in violation of the statutory provisions, then such authority/officer shall be liable to be prosecuted and also proceeded departmentally.

2) Such of the multi-storied buildings and other structures which have been raised without obtaining No objection certificate as per the requirement of the A.P. Fire Services Act, 1999, Multi-storied Building Regulations, the Municipal Corporation Building Bye-Laws, 1981 and other statutory provisions and have not been occupied sofar shall not be issued Occupation certificate by the authority concerned and shall not be supplied with any public amenity like water, electricity⁸ sewerage connection by Hyderabad Metropolitan Water Supply and Sewerage Board and A.P. Transco. Needless to say that once the applicant fulfills the conditions enumerated in these statutory provisions, then the authority concerned will be free to consider the application for grant of public amenities.

3).....

4).....”

6. Pursuant to the orders passed by this Court, the State Government of United Andhra Pradesh constituted a High Power Committee and as per the recommendations of high power committee, G.O.Ms. No.154 MA & UD(M) Department dated

13.03.2007 came to be issued prescribing safety measures for different occupancies and categories. A perusal of the said G.O. shows that a High power committee recommend some mandatory fire safety measures in existing buildings for different occupancies and categories i.e., i) All buildings of 15 metres and above in height, ii) Non Residential buildings of 500 Sq. metres and above in area irrespective of height, iii) Assembly and Educational buildings of 6 metres and above in height apart from other safeguards.

7. Subsequently G.O.Ms.No.246 dated 19.03.2008 came to be issued prescribing certain measures, where it was not feasible to provide for allround open space in case of buildings which are already constructed. Insofar as the height of the building is concerned, there is no dispute, since the impugned proceedings itself show that the height of the building is 12.48 meters which is below the height contemplated for fire safety measures. Insofar as the area is concerned, G.O.Ms.No.154 prescribed fire safety measures incase of non-residential building of 500 sq. meters and above. Pursuant to the judgment of the Division Bench of this Court the State Government constituted a high power committee and after receiving recommendations from various sub committees and after detailed deliberations, recommended certain mandatory fire safety measures in existing buildings for different occupancies and categories. The recommendations of the high power committee lead to issuance of G.O.Ms.No.154, MA & UD(M) Department, dated 13.03.2007 and also G.O.Ms.No.246 dated 19.03.2008. Therefore, it is for the authorities to decide whether the petitioner has fulfilled all the requirements as contemplated under the said G.Os. It is impermissible for this Court to go into the factual aspects and decide as to whether the petitioner has complied/fulfilled with all the requirements of the said G.Os.

8. In view of the above, without going into the merits, the Writ Petition is disposed of directing the authorities to reconsider the

matter for issuance of “No Objection Certificate” and pass appropriate orders in accordance with law without insisting for any further orders from this Court.

9. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:15.07.2016

GM/MSR