

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26110 of 2017

ORDER:

Heard the learned counsel for the petitioner and Sri Laxminarayana Reddy, learned Standing Counsel for the respondent Municipal Corporation.

2. This writ petition is filed under Article 226 of the Constitution of India praying for the following relief:

“To issue a Writ or order or Direction in the nature of Writ of Mandamus declaring action of the 3rd Respondent making attempts to demolish 2nd and 3rd Floor of R.C.C. building consisting of ground and Three (3) Floors Bearing Door No. 38-32-54/1 in an extent of 119 Sq. Yards covered by Sy.No. 90/1 C 2 situated at Parvathi Nagar, Marripalem, Visakhapatnam, Ward No. 40 ignoring Building Application No. 2015- B.A. No. 1323 dated 18-11-2015 for regularization under B.P.S. is illegal, arbitrary consequently direct respondents not to demolish the 2nd and 3rd Floor of the Building.”

3. Petitioner herein earlier instituted a suit vide O.S.No.1501 of 1994 on the file of the Court of the IV Additional Junior Civil Judge, Visakhapatnam for the relief of declaration and permanent injunction. The said Court declared Ex.A.2 notice therein as illegal and consequentially granted permanent injunction on 12.02.1998 restraining the Corporation, its officials, men and agents etc., from interfering with the peaceful possession and enjoyment of the suit schedule building i.e., ground floor and first floor except under due process of law. The learned Judge also directed the plaintiff/petitioner herein to pay the compounding fee within six months from the date of the decree. Subsequently, the respondent Corporation issued a notice vide U.C.No.5/2016/ACP-4/Zone-4 under Section 452 of the Hyderabad Municipal Corporation Act, 1995, asking the petitioner to show cause as to why the subject construction mentioned therein should not be removed. Challenging the said notice issued by the respondent Corporation, petitioner herein instituted O.S.No.766 of 2016 on the file of the Court of the II Additional

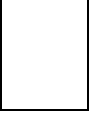
Junior Civil Judge, Visakhapatnam. Petitioner herein also sought for permanent injunction as a consequential relief. The fact remains that the said suit ended in dismissal on 19.12.2016 and no appeal has been preferred against the said judgment dated 19.12.2016 passed in O.S.No.766 of 2016.

4. Today, when the matter is taken up, it is submitted by the learned Standing Counsel for the respondent Corporation Sri S.Laxminarayana Reddy that the petitioner herein can file an explanation to the above mentioned notice dated 29.09.2016 even now and if the same is filed the same will be considered and appropriate action will be taken in accordance with law.

5. Having heard the learned counsel for the petitioner and the learned Standing Counsel for the Corporation, this Court is of the considered opinion that the ends of justice would be served if the writ petition is disposed of, keeping it open for the petitioner herein to submit explanation to the show cause notice bearing U.C.No.5/2016/ACP-4/Zone-4, dated 29.09.2016 issued by the respondent Corporation, within a period of two weeks from the date of receipt of a copy of this order and thereafter it is open for the respondent Corporation to consider the same and pass appropriate orders, in accordance with law, after giving opportunity to the petitioner herein. Till the said exercise attains finality, *status quo* as on today with regard to the structures covered by the notice dated 29.09.2016 shall be maintained. In the event of failure on the part of the petitioner to file the explanation within the time stipulated above, this order will not enure to the benefit of the petitioner herein. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 04.08.2017
grk



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.26110 of 2017

Dated:04.08.2017

grk