

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.11545 of 2017

ORDER:

The present writ petition is filed challenging the notice vide proceedings No.21/2017/ACP-VI, dated 22.03.2017, issued by the 2nd respondent under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955 (for brevity "the Act").

2. It is the case of the petitioner that he is the absolute owner and possessor of an extent of 425 sq.yards of land situated in Sy.No.161/3 of Vepagunta Village, Pendurthi Mandal, Visakhapatnam District. He was granted building permission bearing BA Permit No.1086/2403/B/Z6/AEM/2016, dated 26.10.2016, with respect to the premises bearing No.24-164, Vepagunta Village, Appannapalem, Zone-6, Visakhapatnam District, over an extent of 355.24 square meters. The petitioner was permitted to construct G + 2 Floors. The petitioner's father also owns an extent of 118.79 square meters towards southern side of the petitioner's site. The petitioner's father had left open 400 sq.yards for future road widening, under which he was entitled for Transferable Development Rights Certificate (TDR Certificate), which would enable the petitioner's father either to construct or transfer the said rights in favour of third

parties. The petitioner's father under bonafide belief and in anticipation of TDR Certificate, has started making construction in an extent of 118.79 square meters. The respondent authorities inspite of the fact of issuance of TDR rights in favour of the petitioner's father, which was subsequently transferred in favour of the petitioner, have issued the impugned notice dated 22.03.2017 under Section 636(1) of the Act, directing the petitioner to remove unauthorized construction. Hence the present writ petition.

3. Sri S. Lakshminarayana Reddy, learned Standing Counsel for the respondent – Corporation, submits that so far as the construction made by the petitioner in 355.24 square meters is concerned, the same is not being interfered with in any manner, as the same is in accordance with the building permission granted in his favour. However, as the petitioner failed to submit explanation to the notice issued to him as regards the construction made by him in the adjacent site of 118.79 square meters without there being any building permission, the impugned notice dated 22.03.2017 under Section 636 of the Act came to be issued and the same cannot be found fault with. However, the learned Standing Counsel submits that in response to the notice issued under Section 452 of the Act, if the petitioner approaches the respondent authorities by making appropriate application, the same would have been considered.

4. Though, learned counsel for the petitioner initially argued that no such permission is required on account of entitlement of the petitioner's father for TDR Certificate, he fairly concedes that the petitioner ought to have made an application seeking permission before proceeding with the construction. He would further submit that an opportunity be given to the petitioner to make an application seeking permission and the same may be directed to be considered by the respondent authorities and till consideration of the application being made by the petitioner to regularize the construction, no demolition may be effected.

5. In the peculiar facts and circumstances of the present case, considering the fact that the petitioner is willing to surrender considerable extent of land in favour of respondents for the purpose of road widening in anticipation of entitlement for TDR Certificate and also considering the submissions made on behalf of the petitioner that the so called construction was made in an extent of 118.79 square meters without permission under mistaken impression, interest of justice would be served if liberty is given to the petitioner to approach the respondent authorities by making appropriate application for regularization of the construction made by him with a direction to the respondent authorities to withhold demolition of illegal construction made by the petitioner till consideration of such application.

6. Accordingly, this writ petition is disposed of giving liberty to the petitioner to forthwith approach the respondent authorities by making appropriate application for regularization of unauthorized construction with a direction to the respondent authorities to withhold demolition of unauthorized construction made by the petitioner till consideration of such application. The said application shall be considered and appropriate orders be passed by the respondent authorities within a period of four weeks from the date of receipt of a copy of such application. It is made clear that the petitioner shall not make any further construction whatsoever with respect to the land in an extent of 118.79 square meters. However, there cannot be any impediment with regard to the construction made in accordance with the building permission dated 26.10.2016. No order as to costs.

7. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE CHALLA KODANDA RAM

03.04.2017.

Msr

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