

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

W.P.No.29341 of 2017

ORDER:

Heard the learned counsel for the petitioner Mr.Nazir Ahmed Khan and the learned Standing Counsel for Respondent-Corporation Sri N.Ashok Kumar.

2. A notice bearing No.134-142/3/19/ACP/C5/SZ/GHMC/2017 dated 28.8.2017 issued by the Respondent Municipal Corporation under Section 636(1) of Hyderabad Municipal Corporation Act, 1955, is under challenge in the present writ petition.

3. The petitioner herein made an application for regularisation of unauthorised construction under G.O.Ms.No.152 M.A. dated 2.11.2015 to the Respondent Municipal Corporation. The Respondent Municipal Corporation by way of an order dated 28.8.2017 rejected the said application filed by the petitioner herein. Simultaneously, on the same day, the Respondent Municipal Corporation issued the impugned notice dated 28.8.2017 under Section 636(1) of the HMC Act, directing the petitioner to remove the unauthorised construction in respect of which petitioner submitted application earlier.

4. It is contended by the learned counsel for the petitioner that Rule 11 of the Rules notified vide G.O.Ms.No.152 M.A. dated 2.11.2015 provides for appeal to the committee constituted by the Government within (30) days from the date of receipt of the order passed by the competent authority and in the instant case, the Respondent Municipal Corporation by giving a go-bye to the object under the said rule, issued the impugned notice under Section 636(1) of the HMC Act without even waiting for the appeal period. It is the further submission of the learned counsel for the petitioner that in fact the

order of rejection of BRS application is also not communicated to the petitioner herein and he could secure the said order through online. It is the further submission of the learned counsel that the Respondent Municipal Corporation rejected the BRS application of the petitioner without giving opportunity to the petitioner to represent his case.

5. There is absolutely no dispute about the reality that under Rule 11 of the above said Rules, any applicant aggrieved by an order passed by the competent authority under Rule 6, may prefer an appeal to the Committee constituted by the Government within (30) days and the said right is a statutory right. In view of the same, this Court finds sufficient force in the submission of the learned counsel for the petitioner.

6. For the aforesaid reasons, the writ petition is disposed of, keeping it open to the petitioner herein to file appeal against the order of rejection of BRS application within a period of two weeks from the date of receipt of this order. If any such appeal is filed, the same be considered and appropriate orders be passed in accordance with law. Till such appeal is disposed of, operation of the impugned notice bearing No.134-142/3/19/ACP/C5/SZ/GHMC/2017 dated 28.8.2017 stands suspended. It is also made clear that if the petitioner fails to file appeal within the time stipulated, this order will not enure to the benefit of the petitioner and it is open for the Respondent Municipal Corporation to take action in accordance with law. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 30.8.2017

Note:
Issue C.C. tomorrow.

B/o
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30.8.2017

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