

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.23060 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking to declare the action of the 3rd respondent in contemplating to demolish 1st petitioner's G+1 floor building and 2nd petitioner's G+2 floors building situated in Survey Nos.142/ 1B and 148/ 2A1 situated in Ward No.6, Dayalnagar area of Chinnagadili Revenue Village of Visakhapatnam District, and issuance of notice, dated 07.07.2017, by the 3rd respondent without following any procedure, as illegal and arbitrary and consequently, direct the respondents not to interfere and demolish the petitioners buildings.

It is the case of the petitioners that the 1st petitioner is the absolute owner and possessor of the property of an extent of 151 square yards bearing D.No.1-256 covered by Survey Nos.142/ 1B and 148/ 2A1 situated at Dayanagar area of Chinnagadili Revenue Village of Visakhapatnam District. The 1st petitioner obtained the same from her vendor through registered sale deed dated 09.03.2006. The 1st petitioner entered into a development agreement dated 30.09.21016 with the 2nd petitioner for construction of G + 2 floors in an extent of 95.5 square yards, and accordingly, the 2nd petitioner constructed the building with G +2 floors. The 1st petitioner constructed a building with G + 1 floor in an extent of 56 square yards. While so, the 3rd respondent issued notice in UC No.02/ 2017/ TPS, dated 07.07.2017, alleging that the 1st petitioner constructed G+1 floor building and G+2 floors building unauthorizedly and contrary to the provisions of Greater Hyderabad Municipal Corporation Act and the Rules made thereunder, and therefore, directed the 1st petitioner to remove the said buildings. It is

further stated in the said notice that though the 3rd respondent issued notice under Section 452 of the Greater Hyderabad Municipal Corporation Act (for short 'the Act') on 01.07.2017 to the 1st petitioner, she did not submit any explanation and therefore, the impugned notice is issued.

The main contention of the petitioners is that without issuing notice under Section 452 of the Act, and without calling any explanation and without giving any opportunity to the 1st petitioner, the 3rd respondent straightaway issued the impugned notice directing demolition of the buildings and therefore, issuance of notice under Section 636 of the Act, without issuing notice under Section 452 of the Act, is in violation of principles of natural justice.

Learned Standing Counsel appearing for respondents 2 and 3 submitted that without issuing notice under Section 452 of the Act, notice under Section 636 of the Act cannot be issued by the respondent authorities. He further submitted in view of the contents in the writ petition, now the respondents will issue a fresh notice invoking provision under Section 452 of the Act, and after obtaining explanation from the 1st petitioner, the respondents will proceed in accordance with law.

Considering the grievance of the petitioner and in view of the submissions of the learned Standing Counsel for the respondents 2 and 3, without going into the merits of the case, this Court is inclined to pass the following order:

The 2nd respondent – Greater Visakhapatnam Municipal Corporation, is directed to issue notice afresh, invoking provisions under Section 452 of the Greater Hyderabad Municipal Corporation Act to the

1st petitioner and on receipt of such notice, the 1st petitioner is directed to submit her explanation. After receiving the explanation from the 1st petitioner, the respondents shall consider the same and pass appropriate orders in accordance with law.

With the above directions, the Writ Petition is disposed of. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

July 12, 2017
KTL

RAJA ELANGO, J

