

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.6563 OF 2017

ORDER:

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

2. Petitioner herein claims to have purchased an extent of 188 sq.yards of open site along with old house bearing Nos.23-2/1 & 23-2/2 and also 108 sq.yards of open land, which are adjacent to each other and are situated in Sy.No.173/1 of Vepagunta Village, Ganeshnagar Colony, Srinivasanagar, within the limits of Greater Visakhapatnam Municipal Corporation. It is also the case of the petitioner herein that the said properties were purchased by way of registered sale deeds, dated 01.02.2014 and 02.04.2014, respectively. The Visakhapatnam Municipal Corporation, *vide* building permission *vide* Permit No.1086/1813/B/Z6/CDA/2016, dated 23.08.2016, granted permission in favour of the petitioner herein for construction of Ground + first floor house. Subsequently, *vide* permit order bearing No.1086/2845/B/Z6/CDA/2016, dated 13.02.2017, the respondent Corporation granted permission in favour of the petitioner herein for construction of second floor also. On 21.02.2017, the Zonal Commissioner, Zone-6, G.V.M.C., Visakhapatnam, respondent No.2 herein, issued notice No.20/17, dated 13.02.2017, under Section 452 of the Greater Hyderabad Municipal Corporation Act, 1955 alleging unauthorized

construction of the second floor and directed to remove the said construction within seven days.

3. According to the learned counsel for the petitioner, the said notice issued by respondent No.2 is highly illegal, arbitrary and is without jurisdiction. It is the further submission of the learned counsel that the second floor constructed by the petitioner herein is not unauthorized and the same has sanction *vide* building permit, dated 13.02.2017.

4. On the other hand, it is submitted by the learned Standing Counsel that there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of same, the writ petition is not maintainable. It is also the submission of the learned Standing Counsel that pending writ petition, respondent No.2 herein issued a notice under Sections 405 and 406 of the G.H.M.C. Act calling upon the petitioner herein to vacate the premises and to remove the encroachment of the residential R.C.C. Building.

5. It is also to be noted that while admitting the writ petition, this Court granted interim stay of demolition on 23.02.2017 with a further direction to the petitioner not to make any constructions. Respondent No.2 issued the impugned notice on 13.02.2017 alleging unauthorized construction of the second floor. In the considered opinion of this Court, the said allegation falls to the ground in view of the building permit order, dated 13.02.2017, granted by the Commissioner of the respondent Municipal

Corporation for the second floor. On this ground, the said notice is liable to be set aside.

6. Accordingly, the Writ Petition is allowed setting aside the impugned notice No.20/17, dated 13.02.2017. However, this order will not preclude the respondents from proceeding further pursuant to the notice, dated 12.04.2017, issued by respondent No.2 strictly in accordance with law. It is further made clear that the petitioner herein is entitled to submit explanation to the said notice, dated 12.04.2017, within a period of two (2) weeks from the date of receipt of a copy of this order and if any such explanation is submitted by the petitioner herein within the time stipulated above, it is open thereafter for the respondents herein to take appropriate action pursuant to the notice, dated 12.04.2017. There shall be no order as to costs.

7. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 11.10.2017
AMD

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



WRIT PETITION No.6563 OF 2017

Date: 11.10.2017

AMD