

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.18208 of 2017

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking to declare the action of the 2nd respondent and its authorities in demolishing the building constructed in the premises bearing D.No.16-2-211 (Old D.No.1238), Gandhi Nagar, Nellore City and District, without considering explanation submitted by the petitioners in pursuance of the notice, dated 05.05.2017, as arbitrary and illegal and contrary to provisions of the Hyderabad Municipal Corporation Act, 1955, and violative of the fundamental rights guaranteed to the petitioners under Articles 14, 19 and 21 of the Constitution of India and consequently direct the 2nd respondent not to demolish the building bearing D.No.16-2-211 (Old D.No.1238), Gandhi Nagar, Nellore City and District.

2. Heard learned counsel for the petitioners, learned Government Pleader of Municipal Administration and Urban Development for the 1st respondent and Sri Ancha Pandu Ranga Rao, learned Standing Counsel for the 2nd respondent and perused the material available on record.

3. The case of the petitioners is that the petitioners being owners and possessors of the building bearing D.No.16-2-211 (Old D.No.1238), Gandhi Nagar, Nellore city and District, submitted an application for approval of the building plan and the 2nd respondent approved the same through the proceedings, dated 25.10.2014, for construction of stilt + 4 upper floors. Thereafter,

the petitioners have entrusted the construction work of the building to a builder and the builder carried the constructions with certain deviations. The 2nd respondent authorities, having noticed the deviations, assessed the same for property tax and also collected penalty for the said deviations and having imposed penalty and assessing the property tax for deviations, made believe the petitioners that the deviations which are made by the petitioners are regularized. While so, the 2nd respondent issued notice, dated 05.05.2017, stating that the petitioners have constructed the building contrary to the building plan approval and calling upon the petitioners to submit explanation as to why the deviations shall not be removed. As the petitioners were out of station, the same was served on the builder and that the petitioners could not submit the explanation within the time. While so, the 2nd respondent authorities visited the subject building on 05.06.2017 and put holes to the slab of the building and given three days time to remove the remaining deviations. The petitioners have submitted explanation to the notice issued by the 2nd respondent, dated 05.05.2017, bringing to the notice of the 2nd respondent that the deviations, which are noticed by the 2nd respondent authorities are assessed for property tax and the 2nd respondent authorities have also collected penalty and additional house tax and requested the 2nd respondent authorities not to demolish the building. The petitioners are apprehending that the 2nd respondent is going to take steps for removal of the deviations, which are already assessed for property tax and also imposed penalty and that the 2nd respondent is going to demolish the subject building of the petitioners without considering the

explanation submitted by the petitioners and that if the same is done, then there is every likelihood of causing damage to the entire building, which cannot be compensation in any manner.

4. Learned counsel for the petitioners submits that the petitioners have submitted explanation on 05.06.2017 to the notice issued by the 2nd respondent on 05.05.2017 and without considering the said explanation submitted by the petitioner and without taking any decision or without informing the result of the explanation submitted by the petitioners, the 2nd respondent authorities are trying to demolish the subject building of the petitioners.

5. Considering the facts and circumstances of the case and the submission of the learned counsel for the petitioners, this Court is of the view that the writ petition may be disposed of with the following direction:

The 2nd respondent authorities are directed not to take any coercive steps against the petitioners without taking any decision on the explanation submitted by the petitioners, dated 05.06.2017, in pursuance of the notice, dated 05.05.2017, issued by the 2nd respondent.

6. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall also stand closed.

RAJA ELANGO,J

Date: 7th June, 2017
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