

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.15639 of 2009

ORDER:

This writ petition is filed by the petitioners under Article 226 of the Constitution of India seeking to declare the action of the 2nd respondent in issuing the impugned notice No.UC.16/2009/VIII, dated 24.07.2009, under Section 636 of Hyderabad Municipal Corporation Act to demolish the residential House of the petitioners, D.Nos.25-7-11/20 and 25-7-11/21, covered by T.S.No.935/1 at Plot No.37 and 38, L.P.No.53/47 of Jayakrishnapuram, Rajahmundry, as illegal and arbitrary.

The case of the petitioners is that the petitioners are the absolute owners of Plot Nos.37 and 38/Ward No.37, situated in Jayakrishnapuram, Rajahmundry. The petitioners' vendors had applied for construction of residential apartments in Plot Nos.37 and 38 in T.S.No.935/1, L.P.No.63/47, after payment of necessary fees and plans etc., for construction of Vaishnavi Apartments and that accordingly, the 2nd respondent has granted permission for construction of Stilt + ground + 4 upper floors units vide ROC No.5405/2006-G1/BA No.892/1, dated 09.02.2007 and complex was constructed. The petitioners submitted application for regularisation of their unauthorized construction vide BPS/5578/08/42 to the 2nd respondent on 15.07.2008 under A.P. Regulation and Penalization of unauthorizedly constructed buildings and buildings constructed in deviation of the sanctioned plans Rules of 2007.

The main grievance of the petitioners is that the 2nd respondent issued show cause notice, dated 29.06.2009, under Sections 452 and 461 of the Hyderabad Municipal Corporation Act, calling for explanation from the petitioners, within 10 days from the date of receipt of the notice, as to why action should not be taken for unauthorized construction and

why the same should not be demolished. The said notices were served on the petitioners on 14.07.2009. Accordingly, the petitioners submitted their explanation, dated 22.07.2009 and the same was received by the 2nd respondent on 23.07.2009. The 2nd respondent, without considering and ignoring the explanation submitted by the petitioners, passed the impugned notice, dated 24.07.2009, under Section 636 of the Hyderabad Municipal Corporation Act calling upon the petitioners to remove the deviations within 24 hours from the date of receipt of the notice, failing which the 2nd respondent Department would remove the unauthorized construction and the same was served to the petitioners on 30.07.2009 through a messenger of the 2nd respondent.

Heard and perused the material available on record.

While admitting the writ petition, this Court passed interim order, dated 31.07.2009, in W.P.M.P.No.20526 of 2009, which reads as follows:

“There shall be stay of demolition, pursuant to the impugned notice, dated 24th July 2009. At the same time, the petitioner also shall not make any further constructions, pending further orders.

Notice.”

Learned counsel for the petitioners submitted that the 1st respondent issued G.O.Ms.No.128/Municipal Administration & Urban Development (M1) Department, dated 22.05.2015 and that in pursuance of the said G.O.Ms.No.128, dated 22.05.2015, the petitioners applied for regularisation of their respective units on 21.07.2015 and 10.07.2015. It is further submitted that as per G.O.Ms.No.128, dated 22.05.2015, the petitioners have to submit two applications, one from Air Port Authorities and another from the A.P. State Disaster Response and Fire Service Department under the A.P. Fire Service Act, 1999, and that the

petitioners submitted No Objection Certificate from Airport Authority and with respect to the Certificate by Fire Service Department, since there is stay of further construction, the petitioners could not fix fire extinguishers/equipment under the said Act, which is a pre-requisite condition for grant of certificates by Fire Service Department and that the petitioners filed W.P.M.P.No.49379 of 2016, praying the Court to permit the petitioner to fix the necessary fire equipment, water pipelines and other accessories covering the entire building including the two units of the petitioners on the fifth floor.

This Court, passed interim order in W.P.M.P.No.49379 of 2016, vide order, dated 27.12.2016, which reads as follows:

“This petition is filed to modify the order, dated 31-07-2009, permitting the petitioners to construct and provide extinguishers/equipment water pipeline and other accessories as required under the AP Fire Services Act and Rules and direct the 2nd respondent to regularize the construction of units/plots No.37 and 38 on 5th floor bearing Door Nos.25-7-11/20 and 22-7-11/21 of Vaishnavi Apartment covered by TS No.935/1, LP No.63/47 as per G.O.Ms.No.128, dated 22-05-2015.

Unless and until the main writ petition is heard, no orders can be passed in the present application. Hence, post this application along with the main writ petition.”

In view of the said interim order, the petitioners could not be able to proceed with the installing of the fire extinguishers/equipment and also water pipe lines, as required under G.O.Ms.No.128, dated 22.05.2015.

Considering the facts and circumstances of the case and the submissions of the learned counsel for the petitioners, the Writ Petition is disposed of with the following direction:

The petitioners are permitted to erect the fire extinguishers/equipment and also the water pipelines from the ground level of the subject building in all the floors and upto the 2 units of the petitioners on the fifth floor, as required under G.O.Ms.No.128, dated 22.05.2015. On such erection, the respondent authorities are directed to consider the explanation of the petitioners, dated 22.07.2009, on the basis of G.O.Ms.No.128, dated 22.05.2015 and directed to pass appropriate orders, as expeditiously as possible, more preferably within a period of one (1) month from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, in this writ petition, shall stand closed.

RAJA ELANGO,J

Date: 23rd January, 2017

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