

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION Nos.39452 of 2017 & 4763 of 2017

COMMON ORDER:

W.P.No.39452 of 2017, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“For the reasons stated in the accompanying affidavit it is therefore prayed that this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to direct the respondents 1 and 2 to act in accordance with law and to permit the petitioner to make construction of a residential house in property bearing No.39-22-19/5, Ward No.39, Sy.No.24/6, Kalinga Nagar, Madhavadhara, Zone - IV, Visakhapatnam, in accordance with law, and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. The unofficial respondents 3 & 4 in the afore-stated writ petition filed W.P.No.4763 of 2017 against the official respondents 1 to 5 and the writ petitioner in the afore-stated first writ petition i.e., the 6th respondent and the vendor of the said writ petitioner i.e., the 7th respondent.

3. In the second writ petition, the relief sought is as follows:

“For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon’ble Court may be pleased to issue an appropriate Writ order or direction more particularly in the nature of writ of Mandamus declaring inaction of the Respondents 1 to5 in stopping illegal/unauthorized construction of building being made by the respondents 6& 7 and their kith and kin on the road without any permission and right over the same, which causes obstruction to ingress and aggress to use petitioner's house premises admeasuring 205 Sq. Yards in Sy.No.24/9 situated at D.No.39-22-19/6, Plot No.21, Kalinganagar, Madavadara Village, Visakhapatnam Municipal Corporation Area, Visakhapatnam, Visakhapatnam District despite complaints/representations dated:21-11-2016, 30-12-2016, 2-01-2017 and 09-01-2017 by the

petitioners is arbitrary, illegal, capricious, void and violative of Art.14, 21, 300-A and 350 of the Indian Constitution and violative of provisions of the Greater Hyderabad Municipal Corporation Act,1955 and consequently direct the Respondents 1 to 5 to remove the illegal constructions made by the respondents 6 and 7 and their kith and kin.”

(Reproduced verbatim)

4. I have heard the submissions of Sri *Vedula Srinivas*, learned Senior Counsel appearing for the writ petitioner in the first writ petition, Sri *P.V.S.A.Rama Murthy*, learned counsel appearing for the petitioners in the second writ petition, who are the unofficial respondents 3 & 4 in the first writ petition, learned Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent in the second writ petition, Sri *S.Laxminarayana Reddy*, learned Standing Counsel representing the Greater Visakhapatnam Municipal Corporation (GVMC), appearing for the official respondents 1 & 2 in the first writ petition and respondents 2 & 3 in the second writ petition, the learned Government Pleader for Revenue appearing for the respondents 4 & 5 in the second writ petition, and of Sri *N.Jagannadham*, learned counsel appearing for the 7th respondent. I have perused the material record.

5. Learned Senior Counsel appearing for the writ petitioner in the first writ petition would submit that if the representation of the petitioner is considered and disposed of, in accordance with procedure established by law, after giving an opportunity of being heard to the writ petitioner in the first writ petition and the petitioners in the second writ petition, the ends of justice would be met.

6. However, learned counsel appearing for the petitioners in the second writ petition forcefully contend that without a building permit,

the writ petitioner in the first writ petition made constructions and, therefore, his representation cannot be considered at this stage and that the constructions made unauthorizedly have to be demolished and that the representation of the writ petitioners in W.P.No.4763 of 2017 has to be considered by the official respondents and appropriate action shall be initiated against the unauthorised constructions made by the writ petitioner in W.P.No.39452 of 2017.

7. Learned counsel appearing for the 7th respondent in the second writ petition would submit that he is originally the owner of 105.69 square yards and that he sold 44.33 square yards to the writ petitioner in the first writ petition and that in the remaining portion, the 7th respondent made constructions after obtaining a building permit in the year 2016, i.e., on 06.10.2016, and that the writ petitioners in the second writ petition unnecessarily impleaded the 7th respondent as a party respondent to the writ petition though they are unconcerned with the constructions being made by the writ petitioner in the first writ petition.

8. Learned Standing Counsel appearing for the GVMC would bring to the notice of the Court that the building permission that was obtained in the year 2012 was returned by endorsement, dated 29.09.2012, and hence, at this distance of time, the consideration of the representation of the writ petitioner in the first writ petition does not arise for consideration and that if the writ petitioner is so advised and so desires, he can make a fresh application online for building permit and hence, no relief for consideration of the representation of the writ petitioner in the first writ petition need be granted in these matters.

9. Having regard to the facts and submissions, both the Writ Petitions are disposed of, reserving liberty to the petitioner in the first writ petition to apply online for a building permit or make any other application, which the law permits, insofar as the permission for construction in his subject property. On the petitioner making such application/s, the concerned authority of GVMC shall dispose of the same, in strict accordance with procedure established by law, however, after affording opportunity of being heard to the petitioners in both the writ petitions as well as the 7th respondent in the second writ petition and take a considered decision in the matter and communicate the decision taken thereon to the said parties.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 12th December, 2017

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