

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26471 of 2017

ORDER:

Heard Sri C.Naresh Reddy, learned counsel for the petitioners and Sri P.Kesava Rao, the learned Standing Counsel for Respondent-GHMC, apart from perusing the material available before the Court.

2. A notice bearing No.9/UC/CIR-28/NZ/GHMC dated 29.7.2017 issued by the Respondent-Municipal Corporation under Section 636 of Hyderabad Municipal Corporation Act, 1955 is under challenge in the present writ petition.

3. According to the petitioners, they are the absolute owners and possessors of land admeasuring to an extent of 3300 sq.yards in Sy.No.891/1, 2, 3 (revised Sy.Nos.892/1c and 892/3B) situated at Santoshnagar, Malkajgiri, Hyderabad having purchased the same by way of registered sale deeds. It is further stated that the petitioners herein approached the 2nd respondent-Municipal Corporation for grant of permission for construction over the subject property and the Municipal Corporation granted permission for construction of building vide proceedings dated 7.5.2014. It is further averred in the affidavit that while executing construction work, there were some deviations to the sanctioned plan and in view of the same, petitioners made an application by paying requisite fee under G.O.Ms.No.152 dated 2.11.2015 for regularisation of construction so made in deviation to the sanctioned plan vide Application No.2000000257 dated 24.11.2015. The Respondent Municipal Corporation issued a notice under Section 636 of the HMC Act on 9.11.2015 and the same was questioned in W.P.No.37804 of 2015 and the said writ petition was disposed

of, asking the petitioners to make a representation to the 3rd respondent within one week and with a further direction to the 3rd respondent to take a decision and to proceed further. It is further stated in the writ affidavit that despite the orders of this Court dated 25.11.2015 in W.P.No.37804 of 2015, Respondents 1 to 3 tried to interfere with the rights of the petitioners over the subject property and aggrieved thereby, petitioners approached this Court by way of W.P.No.29123 of 2016. It is also averred in the affidavit that this Court after considering the material available, was pleased to grant interim direction in W.P.M.P.No.36059 of 2016 in W.P.No.29123 of 2016 on 30.8.2016, directing the Respondents herein not to interfere with the petitioners right and further directed the Respondents 2 and 3 to follow due process of law. It is further alleged in the writ affidavit that one Alwal Roopam filed C.C.No.596 of 2017 against Respondents 2 and 3 herein, alleging wilful disobedience of the orders of this Court dated 21.1.2016 in W.P.No.1628 of 2016 and in order to overcome the contempt case, Respondents 2 and 3 rejected the petitioners application vide impugned proceedings. According to the petitioners, they made application for regularisation on 24.11.2015 as per G.O.Ms.No.152 dated 2.11.2015 and the Respondents without hearing the petitioners, rejected the same mechanically to overcome the contempt case. It is also stated that the Respondents have not communicated the rejection to the petitioners.

4. A counter affidavit deposed by the Deputy Commissioner, Circle No.17, GHMC is filed, *inter alia*, stating that the Respondent-Municipal Corporation rejected the building regularisation application filed by the petitioners by way of proceedings No.9/UC/Cir-17-NZ/GHMC/2014-15 dated 28.7.2017. One of the objections raised in the counter affidavit is that under Rule 11(a) of

G.O.Ms.No.152 Municipal Administration dated 2.11.2015, any person aggrieved by an order passed by the competent authority under Rule 6, may prefer an appeal to the Committee constituted by the Government within 30 days from the date of receipt of the order. It is stated by the learned Standing Counsel that without availing the said alternative appeal provision, the present writ petition is filed directly before this Court.

5. Having heard the learned counsel for the petitioners and the learned Standing Counsel for the Respondent Corporation, this Court deems it appropriate to relegate the petitioners to appeal remedy as provided under Rule 11 of the Rules notified vide G.O.Ms.No.152 Municipal Administration dated 2.11.2015 against the order refusing to regularise the structures.

6. For the aforesaid reasons, the writ petition is disposed of, keeping it open to the petitioners herein to file appeal as provided under Rule 11 of the Rules notified vide G.O.Ms.No.152 Municipal Administration dated 2.11.2015 within a period of (10) days from the date of receipt of this order. If any such appeal is filed within the time so stipulated, the same be considered and appropriate action be taken in accordance with law after hearing all the stakeholders within a period of three weeks thereafter. Till such exercise attains finality, the interim order of status quo granted by this Court on 7.8.2017 shall continue to remain operative. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 21.8.2017
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21.8.2017

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