

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

WRIT PETITION NO.33520 OF 2017

ORDER:

Heard learned counsel for the petitioners and Sri Ancha Panduranga Rao, learned standing counsel for the 2nd respondent-Municipal Corporation.

2. Petitioners herein are husband and wife. It is stated that in the month of September, 2015, the 2nd petitioner purchased an old tiled house bearing Door No. 52-1-69/9A, in an extent of 57 square yards situated within the limits of Kakinada Municipal Corporation under a registered sale deed. It is also averred in the writ affidavit that the petitioners herein got the old house demolished and constructed a new RCC building with ground and two floors in that area. The Commissioner, Municipal Corporation, Kakinada, issued a notice, dated 07.09.2017, under Section 456 of the Hyderabad Municipal Corporation Act, 1955, requiring the petitioners to vacate and remove the subject house within 24 hours on the ground that the same being in dangerous position.

3. According to the learned counsel for the petitioners, the impugned action is an outcome of elections conducted for Kakinada Municipal Corporation. It is also submitted by the learned counsel for the petitioners that the impugned action is not in consonance with the Municipal Corporation Act, especially Section 459 of the said Act. It is also submitted that the Licensed Structural Engineer issued a certificate on 25.09.2017, certifying the stability and safety of the subject house.

4. On the other hand, learned standing counsel for the 2nd respondent-Municipal Corporation submitted that the impugned action is strictly in accordance with the Municipal Corporation Act.

5. A perusal of the notice under challenge discloses that the 2nd respondent-Municipal Corporation issued the questioned notice obviously on the basis of the complaint made by one

Smt.M.Lakshmi. In this context, it is appropriate to refer to the provisions of the Hyderabad Municipal Corporation Act, 1955. According to Section 459 of the said Act, it is mandatory on the part of the Commissioner to give reasonable opportunity to the owner or occupier to file objections and to adduce evidence before issuing any notice under Section 456 (1) and (2) of the said Act. In the instant case, except referring to the complaint said to have been made by one Smt. M.Lakshmi, there is no reference with regard to any show-cause notice, which preceded the impugned notice. Therefore, this Court in the facts and circumstances of the case, deems it appropriate to dispose of the writ petition, leaving open to the petitioners to submit objections/representation along with supporting documents by treating the impugned notice, dated 07.09.2017, as show-cause notice within a period of two (2) weeks from the date of receipt of a copy of this order and if any such objections are filed within the time stipulated above, the same may be considered and appropriate action be taken by the 2nd respondent-Municipal Corporation strictly in accordance with law after giving due opportunity to all the stake holders including the petitioners and pass appropriate orders as per law. Till such exercise is completed, there shall be no coercive action pursuant to the impugned notice, dated 07.09.2017 in respect of the subject house.

6. Accordingly, the Writ Petition is disposed of. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

A.V.SESHA SAI, J

DATED: 06-10-2017

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