

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.23015 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking to declare the action of the 3rd respondent in contemplating to demolish AC sheet shed and compound wall of the petitioner in property bearing D.No.1-306/1 covered by Survey Nos.142/1B and 148/2A1 situated in Ward No.6, Dayalnagar area of Chinnagadili Revenue Village of Visakhapatnam District, and issuance of notice, dated 07.07.2017, by the 3rd respondent without following any procedure, as illegal and arbitrary and consequently, direct the respondents not to interfere and demolish the petitioners buildings.

It is the case of the petitioners that she is the absolute owner and possessor of the abovementioned property bearing and she obtained the same along with an AC Sheet Shed through a registered Gift Deed, dated 25.06.2007, executed by her mother in her favour. As there is no compound wall, the petitioner constructed the compound wall to the said property and since then, she is in possession and enjoyment of the same. While so, the 3rd respondent issued notice in UC No.01/2017/TPS, dated 07.07.2017, alleging that the petitioner constructed compound wall in the abovementioned property unauthorizedly and contrary to the provisions of Greater Hyderabad Municipal Corporation Act and the Rules made thereunder, and therefore, directed the petitioner to remove the said compound wall. It is further stated in the said notice that though the 3rd respondent issued notice under Section 452 of the Greater Hyderabad Municipal Corporation Act (for short 'the Act') on 01.07.2017 to the petitioner, she did not submit any explanation and therefore, the impugned notice is issued.

The main contention of the petitioner is that without issuing notice under Section 452 of the Act, and without calling any explanation and without giving any opportunity to her, the 3rd respondent straightaway issued the impugned notice directing demolition of the compound wall and therefore, issuance of notice under Section 636 of the Act, without issuing notice under Section 452 of the Act, is in violation of principles of natural justice.

Learned Standing Counsel appearing for respondents 2 and 3 submitted that without issuing notice under Section 452 of the Act, notice under Section 636 of the Act cannot be issued by the respondent authorities. He further submitted in view of the contents in the writ petition, now the respondents will issue a fresh notice invoking provision under Section 452 of the Act, and after obtaining explanation from the petitioner, the respondents will proceed in accordance with law.

Considering the grievance of the petitioner and in view of the submissions of the learned Standing Counsel for the respondents 2 and 3, without going into the merits of the case, this Court is inclined to pass the following order:

The 2nd respondent – Greater Visakhapatnam Municipal Corporation, is directed to issue notice afresh, invoking provisions under Section 452 of the Greater Hyderabad Municipal Corporation Act to the petitioner and on receipt of such notice, the petitioner is directed to submit his explanation. After receiving the explanation from the petitioner, the respondents shall consider the same and pass appropriate orders in accordance with law.

With the above directions, the Writ Petition is disposed of.
No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

July 12, 2017
KTL

