

THE HONOURABLE SRI JUSTICE A.V. SESA SAI

W.P. Nos.8975 of 2008

ORDER:

This writ petition is filed with the following relief under Article 226 of the Constitution of India.

“To issue a writ of Mandamus or any other appropriate writ and declaring that the action of the respondents in proceeding to demolish the building of the petitioner situated in plot Nos.7 and 8 of Sy.No.3 of Kalvancha Village, Kuntloor Gram Panchayat, Hayatnagar Mandal, Ranga Reddy District, consisting of cellar, ground plus three upper floors, without enabling the petitioner to apply for regularization in terms of G.O.Ms.No.901, dated 31.12.2007 and G.O.Ms.No.112 M.A., dated 31-01-2008 (Rules framed under the A.P. Municipal Laws Urban Areas (Development (Amendment Ordinance, 2007), is arbitrary, illegal and consequently direct the respondents to forbear to demolish any part of the said building of the petitioner, before consideration and rejection of the application of the petitioner for regularization in terms of the Rules mentioned above and grant such other relief as it deems fit in the circumstances of the case.”

According to the petitioner he is the absolute owner and possessor of the plot bearing Nos.7 and 8 of Survey No.3 of Kalvancha village, Kuntloor Gram Panchayat, Hayatnagar Mandal, Ranga Reddy District, totally admeasuring 1300 square yards. It is further stated in the affidavit that he applied for construction permission over the said plots to the 6th respondent-Gram Panchayat, and the 6th respondent vide order dated 02.04.2007 granted two sanctioned plans, enabling the petitioner to proceed with the construction of residential building consisting of ground plus two floors. It is further stated that the petitioner herein

proceeded with the construction on the basis of the permission and completed the building consisting of ground plus three floors.

While things being so, the first respondent-Grampanchayat issued notice dated 30.10.2007 under Rule 33 of A.P. Gram Panchayat Land Development (Layout and buildings) Rules, 2002, calling upon the petitioner to submit explanation within 15 days to show-cause as to why the constructions mentioned in the said notice should not be closed for public/general use. According to the petitioner, when he was contemplating to submit reply notice to the said notice, he came to know that the State Government promulgated an ordinance for regularization and penalization of unauthorized construction as such, he took a decision to make an application under the said scheme instead of submitting explanation.

It is further clear from the reading of the affidavit that the 1st respondent issued notice on 08.03.2008 also on the ground that the petitioner herein made constructions contrary to the permission granted earlier.

A reading of the affidavit, filed in support of the writ petition, reveals that the complaint of the petitioner is that the respondents are proceeding with the demolition of unauthorized and illegal constructions without granting time to enable the petitioner to apply for regularization of the said structure. It is well established principle of law that no statutory authorities can be prevented from discharging its statutory functions so long as they discharge the same in accordance with law.

In the instance case, it is absolutely not the case of the petitioner herein that the respondents have resorted to illegal action without recourse to the law. Article 226 of the Constitution of India is not meant for restraining the authorities from discharging their statutory functions. It is also not the pleading of the petitioner herein that without recourse

to law the respondents are resorting to the action of removal of structures.

During the course of the argument, it is also pointed out by the learned Standing Counsel for the first respondent-Grampanchayat, and also the second respondent, Hyderabad Urban Development Authority, that even during the pendency of the present writ petition the State Government formulated various schemes for regularization and the petitioner did not utilize the same.

Having regard to the submissions made by the learned counsel for the petitioner and the learned Standing Counsel, appearing to the respondents 1 and 2 this Court is of considered opinion that in the absence of any complaint as to any illegality on the part of the respondent authorities no writ can be issued under Article 226 of the Constitution of India.

For the aforesaid reasons, writ petition is dismissed and it is open for the respondent authorities to proceed, in accordance with law. The miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

A.V. SETHA SAI

Date: 05.01.2017
LSK