

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.36550 of 2017

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the challenge is to the notice No.G1/TPS/24/2015, dated 24.06.2016.

2. I have heard the submissions of Sri *Polisetti Radha Krishna*, learned counsel appearing for the petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent and of Sri *N. Praveen Kumar*, learned Standing Counsel appearing for the 2nd respondent Municipality. I have perused the material record.

3. The impugned notice reflects that the petitioner has not obtained permission from the Nirmal Municipality and constructed ground floor and first floor for residential purpose and that in that regard, notices were issued on 30.12.2015 and 16.06.2016 and that while making such constructions, the petitioner also deviated from the sanctioned plan and that, therefore, the petitioner was called upon to show cause, (within three (03) days from the date of receipt of the said notice,) as to why he should not be prosecuted under Section 340 of the Telangana Municipal Act, 1965 (for short, 'the Act'). The petitioner admittedly has not given any explanation to the said notice.

4. However, the learned counsel for the petitioner, at the hearing, would submit that this Court disposed of writ petitions of identical nature with appropriate directions and, therefore, this writ petition may also be disposed of on the same lines. He placed reliance on a common order, dated 19.11.2013, of this Court in W.P.Nos.40038 of

2012, 9559 of 2013 & 9838 of 2013 and also the order, dated 18.12.2012, in W.P.No.29388 of 2012.

5. Learned Standing Counsel appearing for the 2nd respondent would submit that the petitioner may be directed to pay compounding fee of 10% of the value of the land or building including the land and compound the offence as per the provision of Section 340 of the said Act.

6. However, it is to be noticed that the said provision of law was amended in the year 2008 and the said provision of law, after such amendment reads as under:

“Penalty for unlawful building:-

(1) Notwithstanding anything contained in the Act, any person who, whether at his own instance or at the instance of any other person or anybody including a department of the Government, undertakes or carries out construction or development of any law in contravention of the statutory master plan or without permission, approval or sanction or in contravention of any condition subject to which such permission, approval or sanction has been granted shall be punished with imprisonment for a term which may extent to three years, or with fine which may extent to ten per cent of the value of land or building including land in question as fixed by the Registration Department at the time of using the land or building. Provided that the fine imposed shall, in no case be less than fifty per cent of the said amount.”

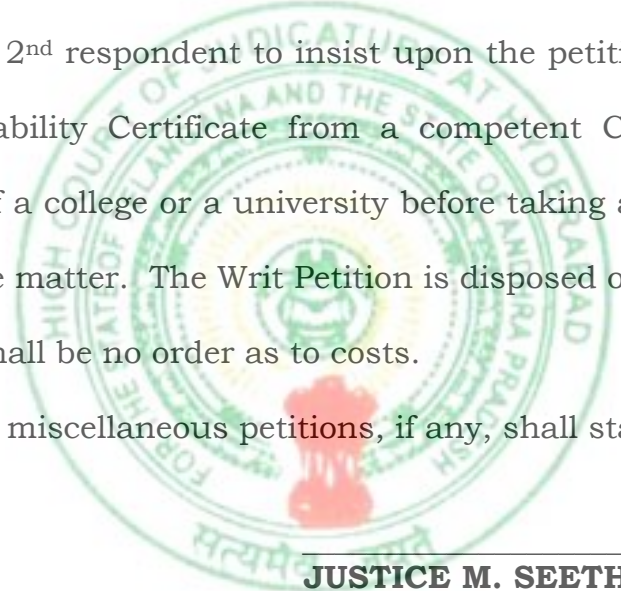
7. The said provision of law has to be read with G.O.Ms.No.168, Municipal Administration and Urban Development (M) Department, dated 07.04.2012, is one of the submissions of the learned counsel.

8. In view of the facts, the legal position obtaining and the orders of this Court in the earlier writ petitions referred to supra, this Court is of the considered view that this writ petition can be disposed of with appropriate directions.

9. Accordingly, while setting aside the impugned order, the 2nd respondent is directed to forthwith inspect the building constructed by the petitioner and compound the offence, if any, committed by the petitioner exercising the discretion and the power envisaged in Section 340 of the Act read with G.O.Ms.No.168 referred to supra after taking into consideration all relevant facts and circumstances. It is open to the 2nd respondent to insist upon the petitioner to produce Structural Stability Certificate from a competent Civil Engineering Department of a college or a university before taking appropriate final decision in the matter. The Writ Petition is disposed of accordingly.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.



JUSTICE M. SEETHARAMA MURTI

Date: 17th November, 2017

Note: Issue C.C. by 20.11.2017.

(B/o.)
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116

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