

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.36289 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioners impugning the notice, dated 26.10.2017, issued under Section 406 of the Hyderabad Municipal Corporation Act, 1955.

2. I have heard the submissions of the learned counsel for the petitioners and of the learned standing counsel representing the respondents 2 & 3-GHMC. I have perused the material record.

3. By the above said notice, the writ petitioners are directed to remove the structures at premises bearing No.5-3-867 situated at M.J. Market, Malakunta Road, allegedly made contrary to the provisions of the said Act and bye-laws. In the said notice it is, *inter alia*, stated that the petitioners encroached upon a nala/ open channel/ drain and that the encroachment is causing obstruction to the free flow of water in the drain; and, the petitioners were directed to remove the same within 24 hours from the date of receipt of the said notice. It is also stated that on their failure to do so, action will be taken for removal/ pulling down of the same in public interest and that the GHMC would pay compensation towards structure value and land compensation as per law, if the affected land is a private patta land in respect of which there is title and valid document.

4. Learned counsel for the petitioners would submit as follows: - 'The petitioners are absolute owners of the above said premises, that is, the subject property by virtue of a registered sale deed, dated 13th Bahman, 1350 Fasali equal to 1941 AD. The constructions were made as per approved plan about eighty years back. The nala is beyond the Southern compound wall, which was also constructed long time back. According to the petitioners, no encroachment whatsoever was made while making constructions or subsequent

thereto. When a notice, dated 13.07.2017, which was first issued was received by the petitioners, on 14.07.2017, a suitable reply was issued, on 27.07.2017, stating clearly the stand of the petitioners and requesting to supply necessary documents, if any, with the 2nd respondent and to measure the property of the petitioners as per title deeds of the petitioners as well as the Nala as per the documents of the Municipality and determine whether or not there was any encroachment as alleged in the notice and further stating that the GHMC shall not try to grab and encroach upon the valuable property of the petitioners under the threat of show cause notice and without following the procedure established by law and without acquiring the required extent of property and paying fair compensation and that the GHMC has to follow the procedure under law, if any part of the property of the petitioners is required for extension of the nala; and that, therefore, the show cause notice is liable to be withdrawn. A copy of the said reply and the acknowledgment from the 3rd respondent showing proof of service of the said reply notice are filed along with the material papers. Thereafter, without complying with the request of the petitioners in the said reply, the impugned notice was again issued, on 26.10.2017, alleging falsely that no reply was issued. In the impugned notice only a time of 24 hours was given to remove the structures.'

5. Learned standing counsel appearing for the respondents 2 & 3 would first submit that the impugned notice was issued following the procedure established by law. He would next submit that in the event this Court is inclined to grant any relief to the petitioners, the writ petition may be disposed of giving liberty to the petitioners to submit a fresh reply to the impugned show cause notice and directing the respondents to pass appropriate orders as per procedure and law after considering the explanation in such reply of the petitioners to the show cause notice.

6. Having regard to the facts and submissions, the Writ Petition is disposed of reserving liberty to the petitioners to submit a reply with their case and

explanation to the impugned notice, dated 26.10.2017, within ten (10) days from today and directing the respondent concerned to afford them an opportunity of hearing and pass appropriate reasoned orders after considering, in detail, the case and the explanation of the petitioners and further directing to furnish to the petitioners under proper acknowledgment, a copy of any such order that comes to be passed, within a week of passing of such order; nonetheless, it is made clear that the respondents shall not take any coercive steps or action adverse to the interests of the petitioners until the communication of a copy of the order to the petitioners as stated supra.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

30.10.2017

Note: Issue CC by 31.10.2017.

[B/o]
Vjl

M. Seetharama Murti, J

