

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.38135 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“....to quash the notice No.002/ TPS/ Cir-27/ NZ/ GHMC/ 2017 dated 31-10-2017 issued by the 2nd respondent herein as inapplicable, illegal, arbitrary and unjust by issuing a writ, order or direction more particularly one in the nature of writ of mandamus and pass such other order or orders as this Hon'ble Court deems fit and proper.”

2. Heard *Sri M.V.Pratap Kumar*, learned counsel appearing for the petitioner; learned Government Pleader for Municipal Administration & Urban Development appearing for the 1st respondent; and *Sri Chatla Madhu*, learned Standing Counsel appearing for the respondents 2 and 3. I have perused the material record.

3. The case of the writ petitioner, in brief, is this:

A lay out was sanctioned, on 10.11.1965, as per the proceedings of the then Executive Officer, Gram Panchayat, Alwal, in respect of the land situated in Sy.No.258. Over a period of time, the plots were sold to different persons and the wife of the petitioner purchased the subject house plot from Sashi Constructions; vide registered sale deed, dated 13.06.2014. She applied for permission for construction of a house on the said property. After due enquiry, permission was granted for construction of the house in the year 2014. Her vendor had applied for regularization of the plot under Land Regularization Scheme (LRS) and a certificate has been issued, vide proceedings, dated 12.08.2009. There is no mention of any nala either in the lay out of 1965 or in any of the link documents. Even as per the Town Survey records, there is no nala/ Open Channel in the vicinity of the property of the petitioner as claimed

in the show-cause notice, dated 13.06.2017, which was served upon the wife of the petitioner on 02.08.2017. She submitted an explanation, on 08.08.2017, stating that there is no official water channel/ nala near the house. None of the documents including the public documents show the existence of a nala. Since the constructions are made after obtaining permission, the constructions are not unauthorised constructions and no construction was ever made on the alleged nala. The nala, if any, existing was diverted by the local public for the sake of their own convenience. No encroachment was made upon any nala and the house was constructed after obtaining permission and a sanctioned plan. If the subject property or any part of the subject property is required, the Municipal Corporation has to follow the procedure for acquisition of the property of the petitioner. Despite issuing a reply, dated 08.08.2017, the impugned order was passed stating that no reply has been issued to the show-cause notice; and, by wrongly stating that the width of the nala shall be 13 meters wide and that due to encroachment at the site, the width of the nala has become 5.5 meters. The said averments are contrary to the own averments of the Municipal Corporation in the show cause notice, dated 13.06.2017. Therefore, the impugned order is liable to be set aside.

4. Learned Standing Counsel appearing for the respondents 2 and 3 would submit that the property of the petitioner will not be interfered with and no demolition activity will be undertaken in respect of the property of the petitioner without following the procedure established by law and that if necessary, respondents 2 and 3 will take steps for acquiring the property of the petitioner.

5. Recording the submissions, the Writ Petition is disposed of and while setting aside the impugned order, dated 31.10.2017, the matter is remitted to the 2nd respondent, Commissioner, Greater Hyderabad Municipal Corporation, for considering the reply, dated 08.08.2017, of the wife of the petitioner and passing a considered order in strict accordance with the procedure established

by law. It is needless to state that the decision taken in the matter or an order that may be passed shall be communicated to the petitioner within a week after the decision is taken or order is passed. Till such exercise is completed, the respondents 2 and 3 shall not in any manner interfere with or demolish any part of the property of the petitioner.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. Seetharama Murthi, J

14.11.2017
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