

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.36130 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the inaction of Respondents 1 to 5 to take action against the representations made by the Petitioner referring to the encroachments as made by the Respondents 6 and 7 by their constructions on Plot Nos.321 to 322 encroaching the road and failure to remove such encroachments as bad, unjust, arbitrary and opposed to law with a consequential direction against the respondents 1 to 5 to take steps against the Respondents 6 and 7 for such removal of encroachments of the road on the south of Plot Nos.289 and 290 corresponding to north of Plot Nos.321 and 322 situated in Survey No.66/3, Raidurg Navakhalsa village, Hussainshahvali Dargah, Serilingampally, R.R.District and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. I have heard the submissions of Sri *Eranki Phani Kumar*, learned counsel appearing for the petitioner, the learned Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent, and of Sri *Sampath Prabhakar Reddy*, learned Standing Counsel, appearing for the respondents 2 to 5. As this Court is inclined to dispose of the writ petition at the stage of admission, there is no need to issue notices to the respondents 6 & 7. I have perused the material record.

3. From the submissions and material borne out by record, it is manifest that the Municipal Corporation issued a notice, dated 01.06.2017, to the petitioner under Sections 452(1) and 461(1) of the Hyderabad Municipal Corporation Act, 1955, *inter alia* stating that

the petitioner unauthorizedly excavated 30 feet wide road portion partly towards Southern side. To the said notice, the petitioner gave an explanation, dated 09.06.2017. Subsequently, the petitioner made representations, dated 27.06.2017, 07.10.2017, 31.08.2017 and 18.10.2017. The first grievance of the petitioner, it appears, is that no action is taken by the Municipal Corporation on such representations made by the petitioner.

4. The submission of the learned counsel for the petitioner is that the respondents 6 & 7 laid a plot on the Southern side of the property of the petitioner and that there is no possibility for the petitioner to encroach any property on the Southern side, as there is a big rock on the Southern side and, therefore, the contents in the show cause notice issued by the Municipal Corporation are not correct. Learned counsel for the petitioner also submits that the petitioner has already given an undertaking affidavit that the constructions would be made in accordance with the building permit only and that if the writ petition is disposed of giving a direction to the official respondents not to interfere with the constructions being made by the petitioner in the subject property as per the building permit, dated 26.04.2017, the grievance of the writ petitioner would stand redressed.

5. Learned Standing Counsel for the Greater Hyderabad Municipal Corporation, appearing for the respondents 2 to 5, would submit that the explanation and representations of the petitioner would be considered and disposed of, in accordance with procedure established by law, and that the petitioner is free to make constructions as per the building permit and that if any constructions are made in violation of the building guidelines and rules and in deviation of the building permit, the Municipal Corporation would proceed, in

accordance with the procedure established by law, against such constructions and that the building permit is obtained by misrepresentation and fraud and that, therefore, liberty may be reserved to the Municipal Corporation to proceed to take appropriate action in that regard against the petitioner.

6. In reply, learned counsel for the petitioner would submit that no misrepresentation and fraud has been made/played while obtaining the building permit.

7. Having regard to the submissions, the Writ Petition is disposed of directing the respondents 2 to 5 to consider and dispose of the explanation, dated 09.06.2017, and subsequent representations of the petitioner afore-mentioned submitted in response to the notice, dated 01.06.2017, and pass appropriate orders, in strict accordance with procedure established by law, within a period of two (02) weeks from the date of receipt of a copy of this order, by also affording an opportunity of hearing to the petitioner. It is made clear that the respondents 2 to 5 authorities are also at liberty to take appropriate steps, in accordance with procedure established by law, with regard to their contention that the building permit is obtained by misrepresentation and fraud. If any action in that regard is taken, the petitioner shall be given opportunity of hearing and then the said aspect of the matter shall be disposed of, in accordance with the procedure established by law. The said exercise, as afore-stated, shall be completed by the respondents 2 to 5 authorities within a period of four (04) weeks from the date of receipt of a copy of this order and the decision taken thereon shall be communicated to the petitioner within a week thereafter. Till such exercise is completed, the petitioner shall maintain *status quo*. Beyond the four (04) weeks period mentioned

above, if the building permit is not revoked, in accordance with the procedure established by law, the petitioner is at liberty to make constructions as per the building permit, dated 26.04.2017, and the respondents 2 to 5 shall not interfere with such constructions, except in accordance with procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 7th December, 2017

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