

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.39286 of 2017

ORDER:

The grievance of the petitioner in this writ petition, under Article 226 of the Constitution of India, is that the notice, dated 29.07.2017, under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955, was issued without considering the petitioner's representation, dated 05.08.2017.

2. Heard the submissions of *Sri K.S Murthy*, learned counsel appearing for the petitioner; learned Government Pleader for Municipal Administration & Urban Development appearing for the 1st respondent; and, of *Sri T.S Venkata Ramana*, learned Standing Counsel appearing for the 2nd respondent. I have perused the material record.

3. The facts necessary for consideration as borne out by the record and as per the submissions made are as follows:

An inspection of the subject property was made, on 29.07.2017; on such inspection, it was noticed that a structure was constructed in the land adjacent to Door No.34-2-66, NTS No.797/6, Revenue Ward No.9, Gandhi Statue centre, Kasturibhaipet, Vijayawada, without obtaining permission from the Municipal Commissioner. When a notice, dated 29.07.2016, was issued under Section 405 of the Greater Hyderabad Municipal Corporation Act, 1955, ('the Act', for brevity), the petitioner failed to either give an explanation or remove the illegal construction said to have been made in contravention of G.O.Ms.no.168, dated 07.04.2012. The said constructions viz., a shop and two toilets are against the Zonal Regulations and Section 405 of the said Act. By the

impugned notice, the petitioner was called upon to remove the constructions said to have been made illegally.

4. At the hearing, learned counsel for the petitioner would submit that the petitioner has already submitted a reply, dated 31.10.2017, and that if the impugned notice, which is issued under Section 636 of the Act is set aside and the explanation of the petitioner is considered and an appropriate order is passed in accordance with the procedure established by law after affording an opportunity of personal hearing, the grievance of the petitioner would be redressed.

5. Learned Standing Counsel appearing for the 2nd respondent would submit that the earliest notice was issued in July 2017; and, there was no reply to the said notice; and, since the grievance of the petitioner is non-consideration of the explanation, the writ petition may be disposed of with appropriate directions.

6. Recording the submissions, while setting aside the notice, dated 29.07.2017, and the notice, dated 20.09.2017, issued under Section 636 of the Act, the 2nd respondent is directed to consider the representations, dated 05.08.2017 and 31.10.2017, of the petitioner and take appropriate decisions in the matter, in accordance with the procedure established by law and by affording an opportunity of personal hearing to the petitioner, however, within four weeks from the date of receipt of a copy of this order, and, communicate the decision taken thereon to the petitioner within a week thereafter. It is made clear that if the petitioner fails to avail the opportunity of personal hearing despite a notice served upon the petitioner, the authority concerned is at liberty to proceed further in the matter and take a decision in accordance with procedure established by law. Till such an

exercise is completed, the constructions in question shall not be demolished.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

21st November, 2017

Note:- Issue CC by 28.11.2017.
(B/ o)
RAR

