

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.39726 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, therefore, prayed that this Hon’ble Court may be pleased to issue any appropriate writ, order or direction one more particularly one in the nature of Writ of Mandamus declaring the inaction of the Respondent Nos. 1 to 3 herein in not discharging their statutory duties for demolition of illegal and unauthorized construction made by the respondents 4 to 7 in the municipal house bearing No.20-4-226/A and 20-4-226/1/C & D situated at Motigalli, Near Pension Office, Hyderabad as being illegal, arbitrary and unconstitutional apart from being contrary to the provisions of the Hyderabad Municipal Corporations Act, 1955 and consequently direct the respondents 1 to 3 to demolish the illegal and unauthorized constructions undertaken by the respondents 4 to 7 in the petitioner's land and pass such other order or orders as the Hon’ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. I have heard the submissions of Sri V.M.M. Chary, learned counsel appearing for the petitioner, learned Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent, and of Sri N. Ashok Kumar, learned Standing Counsel appearing for the respondents 2 & 3. I have perused the material record.

3. As this Court is inclined to dispose of this writ petition at the stage of admission, there is no need to order notices to the respondents 4 to 7.

4. The case and grievance of the writ petitioner are as follows: There is a suit for partition pending between the petitioner and the unofficial respondents 4 to 7, wherein it is *inter alia* claimed that the petitioner is the joint owner of the subject property, situated at

Motigalli, Near Pension Office, Hyderabad, bearing H.Nos.20-4-226/A and 20-4-226/1/C & D. While so, the unofficial respondents started making constructions in the subject property despite the fact that the petitioner is the joint owner and a suit for partition is pending. Though there was a building permission earlier of the year 2014, the said permission elapsed by March, 2017. However, without any permission as of now, the respondents 4 to 7 are carrying on unauthorised constructions illegally in the subject property. The petitioner submitted a representation, dated 23.10.2017, to the Commissioner, Greater Hyderabad Municipal Corporation, Hyderabad, and copies thereof to the Chief City Planner and the Assistant City Planner, Hyderabad. However, no action has been taken so far against the constructions illegal being made by the respondents 4 to 7 in the subject property. Hence, the present writ petition.'

5. Learned Standing Counsel appearing for the respondents 2 & 3 would submit that the Deputy Commissioner is a necessary party and that he is the competent authority in the matter to take a decision and that even according to the averments in the writ petition, there was a building permission earlier granted and, therefore, the contention that the constructions are being made without permission cannot be countenanced.

6. In reply, learned counsel for the petitioner would submit that if a direction is given to the Assistant City Planner, Circle No.4, to consider and dispose of the representation, dated 23.10.2017, of the petitioner, in accordance with procedure established by law, the ends of justice would be met and the grievance of the petitioner stands redressed.

7. Learned Standing Counsel appearing for the respondents 2 & 3 endorses the said submission.

8. Having regard to the submissions, the Writ Petition is disposed of directing the Assistant City Planner, Circle No.4, Greater Hyderabad Municipal Corporation, to consider and dispose of the representation, dated 23.10.2017, of the petitioner in strict accordance with the procedure established by law, after giving an opportunity of hearing to the respondents 4 to 7 also and communicate the decision taken thereon as and when taken within a week thereafter to the petitioner. The respondents 1 to 3 shall take necessary steps to see that the constructions, if any, being made by the respondents 4 to 7 are in accordance with law and rules and take necessary action against them, in accordance with the procedure established by law, if necessary.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 28th November, 2017

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