

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.41578 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking the following the 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, one more particularly in the nature of writ of “Mandamus” or appropriate writ pleased to (1) declare the notice under Section 452(2) of HMC Act, 1955 dated :15.07.2017 including the notice under Section 452(1) and 461(1) of HMC At, 1955 dated : 05.07.2017 as illegal and arbitrary and (2) direct the respondents to accord sanction plan in pursuance of the application made by the petitioner dated: 10.07.2017 for approval of the building plan and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interests of justice.”

[Reproduced verbatim]

2. I have heard the submissions of *Sri L. Ravichander*, learned senior counsel appearing for *Sri P. Sudheer Rao*, learned counsel appearing for the petitioner, and of *Smt. Pingali Lakshmi*, learned Standing Counsel appearing for the respondents 1 and 2. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner applied for building sanction, on 09.07.2017, for construction of a building in the subject plot of an extent of 270 square yards. The respondent issued notice, dated 05.07.2017, under Sections 452(1) and 461(1) of the Hyderabad Municipal Corporation Act, 1955, ('HMC Act') *inter alia* stating that the constructions are illegal and unauthorised. The petitioner submitted an explanation, dated 10.07.2017. While so, the impugned notice

was issued alleging that the petitioner constructed ground floor RCC building unauthorisedly without taking prior permission from the Municipal Corporation. By the impugned notice, the petitioner was also informed that action would be taken under Sections 461(4) and 461-A, 596 and 636 of the HMC Act. The LRS application, dated 28.12.2015, of the petitioner is pending with the respondents. No opportunity of hearing was afforded to the petitioner after the explanation, dated 10.07.2017, was given to the notice, dated 05.07.2017, issued under Section 452(1) and Section 461(1) of HMC Act. Without considering and disposing of the said explanation of the petitioner to the said notice, the impugned notice under Section 452(2) of the HMC Act was given, on 15.07.2017, alleging that the petitioner has not given a reply to the show-cause notice, and that, therefore, further action will be taken as per Sections 461(4) and 461-A, 596 and 636 of the said Act. In the impugned notice, even the date of the earlier show-cause notice was not mentioned. The impugned notice was issued in violation of the principles of natural justice and the procedure established by law. Therefore, the writ petition is filed.

4. Learned Standing Counsel appearing for the respondents would submit that by order, dated 07.12.2017, the building application, dated 09.07.2017, of the petitioner was rejected and that the Municipal Corporation would follow the procedure established by law.

5. The above-said rejection order was passed today, that is, on 07.12.2017, and a copy of the same is not yet communicated to the petitioner. However, a copy of the same is produced during the course of hearing and the same is placed on record. The petitioner gave an explanation dated 10.07.2017, to the show-cause notice, dated 05.07.2017, is not in dispute. Be that as it may, the learned senior counsel for the petitioner and the learned Standing Counsel would bring to the notice of this Court the interim order, dated 08.11.2017, which was passed by this Court in W.P.M.P.no.45921 of 017 in W.P.no.36985 of

2017 filed by Akthar Jaha against the petitioner herein, the official respondents and others.

The said order reads as follows:

“Heard learned counsel for the petitioner and the learned Standing Counsel appearing for the 2nd respondent/Greater Warangal Municipal Corporation.

Learned counsel for the petitioner submits that constructions are being made by the respondents 5 and 6 in the subject property without an approved plan and that the grievance of the petitioner is that the Municipal Corporation is not taking any action against such unauthorised and illegal constructions being made by the said respondents.

Learned Standing Counsel would submit that there is no permission for constructions in the subject property and that a notice under Section 452 of the HMC Act has already been issued and that the Corporation is following the procedure established by law in this matter.

Having regard to the above facts & submissions, the 2nd respondent is directed to expedite the process and stop all further unauthorised constructions in the subject property meanwhile by following the procedure established by law.”

6. The learned Senior Counsel finally submits that the notice impugned which was issued by wrongly stating that no reply was given to the show-cause notice and without considering the explanation of the petitioner to the show-cause notice is liable to be set aside.

7. Having regard to the facts & submissions, this Court is of the considered view that the impugned notice which was issued without considering the explanation, dated 10.07.2017, of the petitioner in response to the show-cause notice, dated 05.07.2017, is liable to be set aside being unsustainable under facts and in law.

8. Accordingly, the Writ Petition is disposed of. While setting aside the impugned notice, dated 15.07.2017, the respondent authorities are directed to

consider and dispose of the explanation, dated 10.07.2017, of the petitioner to the show-cause notice, dated 05.07.2017, after affording an opportunity of hearing to the petitioner herein as well as the petitioner in W.P.no.36985 of 2017 and other unofficial respondents therein and take a considered decision in the matter in strict accordance with the procedure established by law, however, within three 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. Till such exercise as directed is completed, the respondents shall not interfere with the constructions in the subject property of the petitioner in any manner.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

07.12.2017

Note: issue CC by 08.12.2017
(B/ o)
RAR

M. Seetharama Murthi, J

