

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Appeal No.21 of 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri P.V.Vidyasagar, learned counsel for the appellants (respondents 6 and 7 in the writ petition) and Sri G.Vasantha Rayudu, learned counsel for the 1st respondent-writ petitioner. This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.23749 of 2012 dated 23.11.2017.

The 1st respondent herein filed the Writ Petition seeking a mandamus to declare the action of the respondent-authorities, in not taking action to demolish the unauthorised structures raised by respondents 6 to 9 therein in T.S.Nos.654/2, 655/4, 658/4 and 658/5 situated at Ward No.16, Block No.11 & 21 of R.Agraharam, Guntur, Guntur District belonging to the 1st respondent-writ petitioner, as arbitrary, illegal and in violation of the Building Bye-laws.

By the order under appeal, the Learned Single Judge directed the Guntur Municipal Corporation to forthwith take action under the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act") in continuation of the proceedings dated 22.06.2012 already issued against respondents 6 and 7 in the Writ Petition (appellants herein), and to demolish the sheds. For their escapist attitude and disinclination to enforce the provisions of the Act, the Corporation was directed to pay costs of Rs.5,000/- to the 1st respondent-writ petitioner and, likewise, for attempting to mislead the Court by taking false pleas, respondents 6 and 7 in the writ petition (appellants herein) were also directed to pay costs of Rs.3,000/- each to the 1st respondent-writ petitioner.

In the order under appeal the Learned Single Judge observed that construction of two A.C sheds, by the appellants, was without any sanctioned plan, and could not be allowed to stand.

A copy of the notice issued by the Guntur Municipal Corporation, under Section 452 of the Act dated 22.06.2012, has been filed along with the writ petition whereby the appellants herein were directed to show cause why the construction raised by them should not be removed. They were informed that, if a reasonable explanation was not given within a period of five days, it would be treated that they had no explanation to offer; and orders would be issued for removal of the unauthorised construction.

The fact that a notice, under Section 452 of the Act, was issued by the Municipal Corporation is not in dispute. Sri P.V.Vidya Sagar, learned counsel for the appellants, would submit that, though the appellants had submitted a reply to the said notice, no orders were passed thereupon. The fact, however, remains that a copy of the so-called reply is not placed on record. The counter-affidavit of the Municipal Corporation also makes no reference to any such reply having been filed.

While failure on the part of the Municipal Corporation would, undoubtedly, justify a mandamus being issued to them to comply with the law, this Court would not, ordinarily, issue a mandamus to the Municipal Corporation to demolish buildings/structures, for these are matters for the Corporation to examine and take action in accordance with law. The order of the Learned Single Judge, to the extent he directed demolition of the subject structures, is set aside. Suffice it, instead, to direct the Municipal Corporation to pass orders on the appellants' reply, if any, filed within two weeks from the date of receipt of a copy of this order and, if the appellants' explanation is not found

satisfactory, to issue a notice under Section 636 of the Act and, thereafter, take consequent action in accordance with law. If no reply has been filed, to the Section 452 notice, by the appellants herein, it would be open to the Municipal Corporation to issue a Section 636 notice, and thereafter take action in accordance with law. The entire exercise, culminating in action being taken by the Municipal Corporation, shall be completed within six weeks from the date of receipt of a copy of this order.

The order under appeal is modified, as indicated hereinabove, and the Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

05th January, 2018
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Date: 05.01.2018