

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.2155 of 2018

ORDER:

Heard learned counsel for the petitioner and Sri P.Krishna Reddy, learned Standing Counsel offers to appear from the oral instructions on behalf of respondents 2 to 5 and perused the prayer in the writ petition with supporting affidavit, counter-affidavit and other material on record. Notice sent to respondents 6 and 7 returned as left, is a sufficient service.

2. The prayer in the writ petition reads as follows:

“.....to issue a writ, order or direction, more particularly one in the nature of Mandamus, declaring the inaction of the 1st to 5th Respondents viz., not taking any action against, illegal construction of the Big Building, in the House Property bearing House No.17-4-609 & 610 situated at Koonche Tola Saheb, Shaikh Faiz Ki Kaman, Yakutpurah, Hyderabad-500023, over/on the very soft, wet, bad and unfit soil, and thereby putting the innocent lives of the other inmates, neighbours, including the Petitioner's Tenants their families, passages-commuters, including the school and college going children, aged person women, etc., at risk and in danger, and thereby infringing and violating and depriving the Petitioner, in particular and the common public in general, from the enjoyment of their fundamental rights to life, guaranteed Under Article 21 of (The) Constitution of India and other rights, as illegal, arbitrary, unconstitutional and violative of Article 21 of (The) Constitution of India, etc., and to direct them, to demolish the illegally constructed Building, in the Premises bearing No.17-4-609 & 610 situated at Koonche Tola Saheb, Shaikh Faiz Ki Kaman, Yakutpurah, Hyderabad-500023 over/ on the very soft, wet, bad and unfit soil, and stay all further illegal construction activities, in the House property bearing House No.17-4-609 & 610 situated at Koonche Tola Saheb, Shaikh Faiz Ki Kaman, Yakutpurah, Hyderabad-500023, and remove the encroachment from the passages, in the interest of justice.....”

3. It is stated in the affidavit filed in support of the writ petition that despite complaint given by the petitioner, respondents 2 to 5 are not taking action by hand in glove, hence, he is constrained to file the writ petition complaining their inaction for necessary directions.

4. The counter-affidavit of respondent No.4 on behalf of respondents 2 and 3 is that the said allegation is untrue for the reason immediately after the complaint about illegal construction, from one Mayroze Ahmed Khan on 11.12.2017, the respondents visited the property and noted the construction making by respondents 6 and 7 and acted upon by issuing notice under Section 452(1) and 461(1) of the Greater Hyderabad Municipal Corporation Act, 1955, dated 19.01.2018 to respondents 6 and 7 and further notice under Section 452(2) of the Act was issued on 22.02.2018 and they are going to issue notice under Section 636 of the Act for demolition of unauthorized construction directing to remove else to take recourse and the writ petition is not bonafide outcome. The copy of the notice dated 19.01.2018 is filed but not any notice dated 22.02.2018 with the counter-affiavit.

5. At this Stage, Sri Mohd.Khaliq Jaffer Siddique, learned counsel stated he filed appearance before the Registry on 13.03.2018 on behalf of respondents 6 and 7 with counter-affidavit of respondent No.7 which speaks that respondents 6

and 7 are absolute owners of the area of 77 Sq.yards in H.No.17-4-609 and 610 of Kunchey Tola Sahab, Sheik Faiz Ke Kaman, Yakutpura, Hyderabad and ground floor already constructed after obtaining sanction from the G.H.M.C and first and second floors are being constructed and around the building there are multi-storeyed buildings to say that what is the writ petition averred of land is soft as a whole and building withstand with such a construction of 1+2 and that they also left setback sides and the writ petition is not maintainable but for to relegate the petitioner to approach the civil Court and sought for dismissal of writ petition.

6. Even from the very counter-affidavit of respondent No.7 on behalf of respondent No.6 clearly speaks the construction making is unauthorized, no approved plan or sanction even for the ground floor that is produced before the Court. It is not even their case that Municipal Authorities did not serve any notice. The oral submission that they were under the impression that because of the extent is 77 Sq.yards no permission is required, is untenable from their very counter-affidavit saying for first floor already obtained permission. It is unknown where is the no need of permission for the first and second floors.

7. Having regard to the above, respondents 2 to 5 are directed to take necessary action to say that the unauthorized illegal construction shall not survive, but for, if at all they are entitled for regularization and applied for the same subject to sustainability of the building from any soil test and the other prerequisite precautions being taken.

8. With the above directions, this Writ Petition is disposed of directing respondents 2 to 5 to file their counter-affidavits within four weeks before the Registry with the progress of the action being taken pursuant to this order. If at all there is no progress, the writ petitioner is entitled to move the Court with Contempt Case or otherwise.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

Date: 14.03.2018
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