

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.16926 OF 2017

ORDER:

Heard Mr.K.Lakshmi Narasimha for petitioner and Mr.Ancha Pandu Ranga Rao for 1st respondent. No representation for 2nd respondent.

The petitioner herein filed W.A.No.1055 of 2014 against the order dated 02.04.2014 in W.P.No.26272 of 2010. The petitioner herein was arrayed as 2nd respondent in W.P.No.26272 of 2010. The Division Bench vide order dated 11.02.2015 set aside the directions issued in W.P.No.26272 of 2010, however keeping in view the constructions made by petitioner herein contrary to sanctioned building plan, issued the following directions:

"We direct the 1st respondent-Municipal Corporation to take up the application for regularization, and the complaint for unauthorized construction analogously and give a notice of hearing to the writ petitioner as well as the appellant before us. After hearing them and after considering the material placed before the Commissioner, appropriate order shall be passed. While doing so, the Commissioner shall examine whether regularization in a matter of deviation and unauthorized construction is possible or not under the law and after deciding the matter, if it is found that regularization of any extent is not possible, obviously, the complaint for unauthorized construction has to be heard out and decision has to be taken thereon. The entire exercise shall be completed within eight weeks from the date of communication of this order. In the meantime, the interim order passed by this Court earlier shall continue provided the appellant carries out the following order of injunction.

The appellant is restrained from making any construction and further construction in the structure or inducing any person either as licensee or tenant or

occupant and further using any built up area in any manner. The rent or occupation charges at present received from any person, who has already been inducted, shall be kept in a bank account and shall not be appropriated till the disposal of the matter by the respondent-Corporation as above.

It is made clear that the observations and findings of the learned trial Judge will not be a binding and influencing factor in taking decision in the matter.”

The 1st respondent issued impugned notice dated 05.05.2017 calling upon the petitioner herein to remove the unauthorized floors constructed by petitioner at door No.10-15-44 & 45, Main Road, Rajamahendravaram. The notice of 1st respondent reads thus:

“Kind attention is drawn to the references cited above are brought to your notice wherein you are aware of the contents in the references mentioned above. The Municipal Corporation has followed due process of law. The Hon’ble Principal Junior Civil Judge Court of Rajamahendravaram has dismissed the suit vide O.S.No.887/2009 filed by you on 20.03.2017 and you are also aware of the same.

The plans submitted by you for Building Penalization Scheme vide B.P.S.No.BPS/RAJ/MO/23/0832815 is not eligible for Building Penalization as per the BPS Rules. The said BPS file was only submitted by you on 02.07.2015 through online by paying an initial amount of Rs.10,000/-. The further details like Building Plans, documents, Tax receipts etc., were not uploaded till date in the online system. The said building constructed by you is having Ground + 6 floors which is highly irregular in a site area of 161.00 sq. mts as per Building Rules abutting to main road which is a 60’ wide Master Plan Road. The building constructed by you is not eligible for Penalization under BPS Scheme.

Thus you are hereby directed to remove the unauthorised floors constructed by you over the Ground Floor and First Floor within 2 days from the date of receipt of this notice failing which the Rajamahendravaram Municipal Corporation will take up the removal and the expenditure incurred from such removal will be recovered from you as per rules”.

Mr.Lakshmi Narasimha for petitioner contends that a combined reading of orders in W.P.No.26272 of 2010 and W.A.No.1055 of 2014 concludes that the 1st respondent is required to issue notice to petitioner while considering the application of petitioner for regularization of unauthorized structures/floors. In the case on hand, the direction is not complied by 1st respondent by issuing notice or affording opportunity of hearing. Therefore, the notice/endorsement impugned in the writ petition is liable to be set aside.

Mr.Pandu Ranga Rao, after verifying the record, fairly states that firstly there is no reference to the hearing, if any, given by 1st respondent in the notice/endorsement and secondly the counter affidavit is also silent. Therefore, he has difficulty in sustaining the notice/endorsement. He reports that the notice/endorsement can be set aside and matter remitted to 1st respondent for disposal of the case as directed by this Court in W.A.No.1055 of 2014. He further contends that the petitioner ought not to take advantage of one limb of the direction in W.A.No.1055 of 2014 and at the same time cannot maintain reticence on the latter portion of the order of the Division Bench i.e., calling upon the petitioner herein to deposit the rents in a separate account. This Court gets another admission from Mr.Lakshmi Narasimha that affidavit is silent on complying with the direction by the petitioner and the petitioner cannot have luxury of defeating the direction of this Court while insisting compliance with the direction. He further submits that the petitioner is under obligation to deposit the rents as

directed by the Division Bench. The petitioner would appear before 1st respondent with the quantum of rent received and proof of deposit in a separate account when the petitioner is called for hearing by 1st respondent. The statement is placed on record and accepted.

The writ petition is, accordingly, disposed of by this order:

- (a) notice/endorsement impugned is set aside. The matter is sent back to 1st respondent;
- b) the 1st respondent issues notice to petitioner and the 2nd respondent herein, and passes orders as directed by the Division Bench in W.A.No.1055 of 2014 within four weeks thereafter; and
- c) the petitioner, if does not appear before the 1st respondent with proof of deposit of amount, the hearing opportunity given can be made a formal opportunity and forthwith steps for demolition are taken.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

12th April, 2018

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