

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.111 of 2016

ORDER:

Heard the learned counsel for the petitioner as well as the learned standing counsel appearing for respondent Nos.2 and 3.

The prayer in the writ petition is as under:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents Nos.2 and 3 herein and their subordinates in trying to demolish the partly raised constructions in the land admeasuring 88 sq. yards in R.S.No.278/1C situated at Shyamala Nagar, Gandhipuram-III, Rajahmundry bounded by East: Site of Vendor No.1; West: Road; North: Site of K. Vimaladevi and South: Road and in the land admeasuring 48.88 sq. yards in R.S.No.278/1C situated at Shyamala Nagar, Gandhipuram-III, Rajahmundry bounded by East: Compound wall of Sasirekha Commercial Type Institute; West: Site of Vendor No.1; North: Site of K. Vimaladevi and South: Road, as not allowing the petitioner to proceed with the construction as per the plan submitted is illegal, null and void and also contrary to the provisions of Hyderabad Municipal Act and G.O.Ms.No.423, Municipal Administration and Urban Development (M1) (MA), dated 31.07.1998 and a consequential order directing the respondents to drop all further proceedings in this regard by permitting the petitioner to proceed with construction in the land admeasuring 88 sq. yards in R.S.No.278/1C situated at Shyamala Nagar, Gandhipuram-III, Rajahmundry bounded by East: Site of Vendor No.1; West: Road; North: Site of K. Vimaladevi and South: road and in the land admeasuring 48.88 sq. yards in R.S.No.278/1C situated at Shyamala Nagar, Gandhipuram-III, Rajahmundry bounded by East: Compound wall of Sasirekha Commercial Type Institute; West: Site of Vendor No.1; North: Site of K. Vimaladevi and South: road and to pass such other order or orders as this Hon'ble Court may deem fit, just and proper in the circumstances of the case.”

The facts of the case are that the petitioner is the absolute owner and possessor of two separate sites i.e., land admeasuring 88 and 48.88 square yards in R.S.No.278/1C situated at Shyamala Nagar, Gandhipuram-III, Rajahmundry, having purchased the same under a registered sale deed dated 23.03.2002 for a valuable consideration vide document bearing No.1214/2002 and since then she has been in peaceful possession and enjoyment of the same. For the purpose of construction of separate sheds in the

said two sites, the petitioner submitted plans to the 2nd respondent Corporation on 19.12.2015 by paying necessary fee of Rs.4,550/- and Rs.1,546/- and also Rs.954/- and Rs.3,475/- respectively and the 2nd respondent Corporation acknowledged receipt of the same on the same date. It appears, without any permission, the petitioner has constructed the sheds. In the affidavit filed in support of the writ petition, it is stated that the constructions are made in terms of G.O.Ms.No.423 dated 31.07.1998. It is also stated that as per the said G.O., submitting drawings and paying necessary fee is sufficient to undertake any construction and therefore, the said sheds were constructed. However, it is informed that since the said sheds were constructed without permission, the same were demolished.

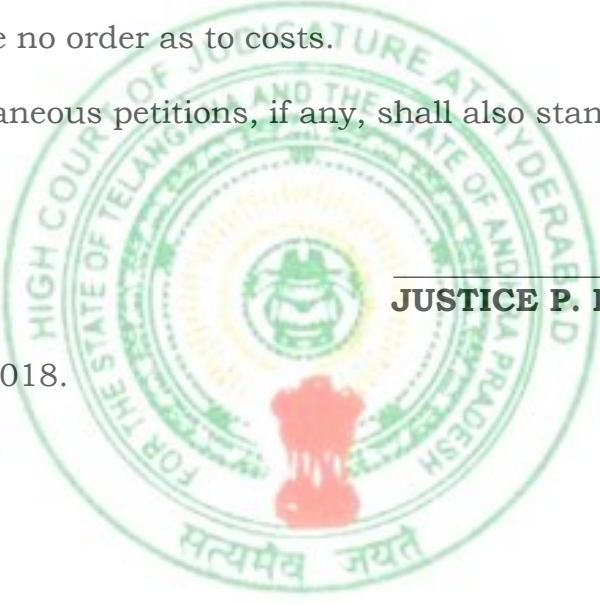
Be that as it may, as on the date of filing of the application by the petitioner i.e., on 19.12.2015, G.O.Ms.No.423 dated 31.07.1998 was not in force and in its place G.O.Ms.No.168, Municipal Administration and Urban Development (M) Department, dated 07.04.2012 was issued and it is in force. Any application made after 07.04.2012 should be in accordance with the rules and regulations framed in the said G.O. In fact, as per Rule 5 of G.O.Ms.No.168, permission is mandatory for any construction irrespective of the extent of the land, subject to change in the set backs. This being the position, the contention of the petitioner that mere submission of drawings and payment of fee for construction cannot be countenanced.

However, since the sheds constructed were already demolished and as the application dated 19.12.2015 submitted by the petitioner along with requisite fee is pending consideration, the

same can be considered. Therefore, respondent Nos.2 and 3 are directed to consider the application dated 19.12.2015 submitted by the petitioner for the purpose of granting permission in terms of G.O.Ms.No.168 dated 07.04.2012 and pass appropriate orders, if the application is otherwise in order, within a period of three months from the date of receipt of a copy of this order. However, it is made clear that respondent Nos.2 and 3 should assure that no construction should be made till the application dated 19.12.2015 is considered and appropriate orders are passed.

With the above directions, the writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.



JUSTICE P. KESHAVA RAO

Date: 16.04.2018.
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