

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No.19365 OF 2009

ORDER

This writ petition is filed seeking to issue a Writ of Mandamus declaring the action of the respondents in trying to demolish the house of the petitioner *vide* show cause notice dated 20.8.2009 and issuance of notice dated 1.9.2009 under Section 636 of Hyderabad Municipal Corporation (HMC) Act (for short 'the Act'), as arbitrary and illegal.

It is the case of the petitioner that she is the owner and possessor of house bearing No.13-5-189, Amalapur, Karwan, Hyderabad, having purchased the same *vide* registered sale deed dated 25.4.1987. While so, based on the allegations made by one Shivaji Rao Babde, who is neighbour of the petitioner, the 2<sup>nd</sup> respondent issued the letter dated 21.2.2009 to stop further construction and directed her to produce the title deed. In pursuance of the same, the petitioner stopped further construction and produced the title deed. The respondents, without verifying the title deed, issued show cause notice dated 20.8.2009 under Section 452 of the Act and thereafter, issued notice under Section 636 of the Act directing the petitioner to remove the construction within 24 hours. Pursuant thereto, the petitioner submitted her explanation on

2.9.2009. Without considering the same, the respondents are threatening to demolish the house of the petitioner. In these circumstances, the present writ petition is filed.

While admitting the writ petition, this Court granted *status quo* on 16.09.2009 in WPMP No.25283 of 2009. Till date, the respondents did not choose to file counter-affidavit denying the averments made in the writ petition.

In those circumstances, the averments made in the affidavit to the extent of non-application of mind on the part of the respondents in considering the objections of the petitioner and dealing with the same may be taken as true.

Hence, it is to be noted that this Court in a catena of judgments, categorically held that a duty is cast on the GHMC/Municipal Corporation to consider in each and every case as to whether the deviations, alleged to have been made by a party are condonable and if the deviations do not affect the public or do not cause inconvenience to the neighbours, the authorities shall exercise their discretion and pass appropriate orders.

In view of the same, the Writ Petition is allowed setting aside the notice impugned. However, the respondents are at liberty to consider the objections and take appropriate action in accordance with law keeping in view the principles laid

down by the Apex Court. Though the writ petition is of the year 2009, no counter-affidavit has been filed so far, hence, the respondents are directed to pay costs of Rs.1,000/- to the Registrar (Judicial) within a period of four weeks.

Miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE CHALLA KODANDA RAM

9<sup>th</sup> July, 2018  
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