

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.5172 of 2015

O R D E R:

Petitioner had filed this Writ Petition assailing the order dt.10.02.2015 passed by the 2nd respondent under Section 450 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the GHMC Act') revoking the building permission granted to the petitioner on 11.07.2013 for construction of a stilt + Ground + three upper floors residential building at Prakashnagar, Begumpet, Secunderabad.

2. It is not in dispute that a show cause notice dt.29.11.2014 was prepared by the 2nd respondent. On the ground that when the said show cause notice was sought to be served on the petitioner at the site, where the construction work was going on, and the persons available at the site had rejected to take the notice, and alleging that it was pasted on the pillar at the construction site, action was sought to be initiated against the petitioner.

3. Petitioner then approached this Court by filing W.P.No.39403 of 2014 alleging that the said notice was never attempted to be served on the petitioner.

4. On 23.12.2014 in W.P.MP.No.49426 of 2014 in W.P.No.39403 of 2014 this Court observed that having

granted permission to the petitioner for making construction on 11.07.2013 in the subject property, it is not open to the respondents to interfere with the same without following the procedure prescribed under Section 450 of the GHMC Act. It further held that petitioner is entitled to submit a representation to respondents 2 and 3 within four weeks from that day to the show cause notice dt.29.11.2014, the same shall be considered by the respondents 2 & 3 and then a reasoned order be passed and communicated to the petitioner. It was directed that till such action is taken, the respondents shall not interfere with the construction being made by the petitioner.

5. Thereafter, petitioner gave explanation on 17.01.2015 to the Zonal Commissioner, North Zone, GHMC. In the said representation/reply to the show cause notice, petitioner specifically stated that the show cause notice issued by the respondents 2 and 3 dt.29.11.2014 does not mention which facts the petitioner is supposed to have misrepresented for obtaining the building permission, and it is not possible to submit any explanation to the show cause notice without any specific averments as to what facts were suppressed.

6. Prior thereto, petitioner had also applied on 09.12.2014 to the Public Information Officer of the GHMC under Right to Information Act, 2005 (for short the 'RTI Act') for supply of layout copy of the land in survey No.194/2 to 194/3 of

Prakashnagar, Begumpet, submitted allegedly by one Atchaiah and others of Balanagar Mandal, Ranga Reddy District and requested to furnish certified copy of the same, since it was this lay out which was mentioned in the show cause notice dt.29.11.2014 issued to the petitioner. However, till date, copy of the said layout was not furnished to the petitioner either under RTI Act or otherwise.

7. Without doing so, the impugned order had been passed on 10.02.2015 by the 2nd respondent. In the said order, in the 1st paragraph, it is mentioned by the 2nd respondent that the petitioner had shown land of extent 306.60 sq. yards as a plot by mentioning a house No.1-10-27/5/6/1 and that it was part of a park open space located adjacent to plot No.5 of Atchaiah layout.

8. Why this factor is not mentioned in the show cause notice dt.29.11.2014 is not explained by the respondents. It is also not explained by the respondents why copy of the said lay out, on which much reliance is placed by the respondents 2 and 3, had not been furnished to the petitioner in spite of her specific request for furnishing the same under RTI Act through representation dt.09.12.2014.

9. Strangely, the impugned order was passed stating that the petitioner did not submit any representation within four weeks from the date of the order of the High Court

dt.23.12.2014 in W.P.MP.No.49426 of 2014 in W.P.No.39403 of 2014, though admittedly petitioner gave representation refuting the contents of the show cause notice on 17.01.2015, which was acknowledged by the Zonal Commissioner, North Zone. However, in the counter affidavit filed by the respondents 2 & 3 the receipt of the reply of the petitioner is admitted in para 5, though in the impugned order it is denied that the petitioner gave any reply.

10. No doubt, under Section 450 of the GHMC Act, 1955 power has been conferred on the 2nd respondent to revoke permission granted for construction if there was any material misrepresentation made, fraudulent statement or information was furnished. This being a punitive action, the 2nd respondent was bound to adhere to the principles of natural justice.(See ***Mirza Khusru Ali Baig and others v. The Greater Hyderabad Municipal Corporation,rep. by its Commissioner & another***¹).

11. Therefore, as part of principles of natural justice, the alleged layout which is being relied upon by the 2nd respondent was bound to be furnished to the petitioner by respondents 2 & 3, and the 2nd respondent could not have proceeded and passed the order on 20.02.2015 without supplying copy of the said layout along with the show cause

¹ 2013(2) ALD 785

notice or at least when the petitioner sought for it under the RTI Act.

12. It is clear that the 2nd respondent somehow wanted to cancel the petitioner's building permission granted on 11.07.2013 by relying on material which was not furnished to the petitioner. In fact, according to the petitioner, there is an order passed on 22.11.2006 in I.A.No.369 of 2006 in O.S.No.2351 of 2006 by the Civil Court under Order XXXIX Rules 1 and 2 of CPC granting an injunction against third parties in favour of the petitioner.

13. Though the GHMC is not a party to it, the said order also has a bearing on the contention being urged by the 2nd respondent.

14. In this view of the matter, I am satisfied that the order dt.20.02.2015 passed by the 2nd respondent is unsustainable for gross violation of principles of natural justice for non furnishing of the lay out copy, on which reliance was placed by the 2nd respondent, and also on the ground of non application of mind, since the contents of the representation given by the petitioner on 17.01.2015 were not at all considered by the 2nd respondent.

15. Therefore, this Writ Petition is allowed; the proceedings dt.20.02.2015 issued by the 2nd respondent as well as the consequential notice under Section 636 of the Act issued on

28.02.2015, are accordingly set aside; within three (03) weeks from the date of receipt of copy of this order, the 2nd respondent shall furnish to the petitioner certified copy of the lay out approved by the then Municipal Corporation of Hyderabad in Survey No.194/2 to 194/5 of Prakashnagar, Begumpet, Secunderabad vide permit 28/55 of 1984 in file No.1286/EP1/68; petitioner is permitted to submit a fresh explanation to the 2nd respondent to the show cause notice dt.29.11.2014 after perusing the layout and also permitted to place any other facts, which the petitioner seeks to place before the 2nd respondent for consideration; the 2nd respondent shall then conduct a personal hearing in the matter and pass a fresh order afresh within three (03) months. Till such final order is passed, the respondents shall not interfere with the construction being made by the petitioner pursuant to the permission dt.11.07.2013 granted by the 2nd respondent. The 2nd respondent shall also pay costs of Rs.2,500/- to the petitioner.

16. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

18th April, 2018.
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