

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.13079 of 2009

ORDER:

This writ petition is filed seeking to declare the action of the respondents in demolishing the house of the petitioners bearing D.No.6-27, Cheemalapalli Village, Sheshadri Nagar, Vepagunta Post, G.V.M.C. Limits, Pendurthi Mandal, Visakhapatnam District, as illegal and arbitrary.

Petitioner Nos.1 to 3 assert that they are in occupation of 120 square yards of land in Survey No.27 (part), Cheemalapalli Village for the past six decades as the Lanka family members, who are its original owners, allowed them to live thereon. Their names were also entered in the revenue records i.e., adangals and tax receipts. They further assert that petitioner No.4 purchased the said land from them under an agreement. Thereafter, they submitted an application on 26.05.2009 to the respondent Corporation for obtaining permission for construction of a small house on the said land. In anticipation of the approval, the petitioners commenced construction. While so, on 04.06.2009, the respondent authorities, all of a sudden, came to the house in question, without issuing any notice under the provisions of the Hyderabad Municipal Corporation Act (for short 'the Act') and without verifying the electricity and property tax receipts, have demolished the newly constructed house. They also assert that they had filed O.S.No.136 of 2009 in the Court of

Junior Civil Judge, Bheemunipatnam, and the same is pending. However, it is stated that the plan submitted by the petitioners was returned by the Corporation *vide* endorsement, dated 12.06.2009, and that they are in the process of resubmitting the plan, as directed in the above said endorsement.

On 02.07.2009, while admitting the writ petition, this Court granted interim stay of demolition of the structures in question with a further observation that the petitioners shall not proceed with further construction until further orders.

It may be noted that the writ petition was admitted on 02.07.2009 and the respondents filed a counter-affidavit on 16.07.2018 i.e., after lapse of about nine years, that too, on payment of costs of Rs.500/-.

In the counter-affidavit, the respondents admitted that the petitioners submitted an application on 26.05.2009 seeking permission for construction of ground + first floor in the place of existing hut, and even before granting permission, they proceeded with the construction and they stated that a notice under Section 452 of the Act was issued on 29.05.2009 but the petitioners did not choose to respond to the same, as such, a further notice under Section 636 of the Act was issued with a direction to them to remove the unauthorized construction. They further stated that the petitioners had constructed the first floor in violation of the order, dated 02.07.2009, passed by this Court and that petitioner Nos.1 to 3 sold away the said house to petitioner

No.4 and on verification, petitioner No.4 is in occupation of the unauthorisedly constructed building without obtaining the occupancy certificate from the respondent Corporation. Therefore, in terms of the provisions of the Act as well as Rule 26 of the Andhra Pradesh Building Rules, 2012, the unauthorized constructions are liable to be removed. In those circumstances, the respondents pray for dismissal of the writ petition.

Learned counsel for the petitioners disputed the specific assertion made in the counter-affidavit that the petitioners had completed the construction and living therein. He expresses his inability to produce the notices sent to the petitioners as well as the reply thereto. He submits that the respondent Corporation may be directed to follow due process of law before taking any action against the petitioners. He also submits that if there is any violation in the construction, in terms of the judgment of this Court in **3 Aces, Hyderabad Vs. Municipal Corporation of Hyderabad**¹, the respondent authorities are required to consider whether such lapses are compoundable.

Learned Standing Counsel for the Corporation submits that the respondent Corporation would take action only after issuance of notice and calling for explanation from the petitioners.

In those circumstances, the writ petition is disposed of with the direction to the respondent Corporation to issue notice to the present occupant i.e., petitioner No.4 in accordance with law, by

¹ 1994 (3) ALT 73

clearly setting out the violations, and pass appropriate orders after considering the explanation that may be submitted by petitioner No.4. Till such time, no coercive steps shall be taken against the petitioners with respect to the alleged constructions.

Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:31.07.2018

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