

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.14157 OF 2017

ORDER:

Heard Mr.J.P.Sikanth, holding for Mr.L.Arun Kumar, counsel for petitioners, Mr.Prabhakar Sipadha for respondent Nos.4 and 5, and Mr.Pasham Krishna Reddy, standing counsel for respondent Nos.2 and 3.

The petitioners challenge notice issued by respondent No.2 calling upon the 1st petitioner to remove a few alleged obstructions said to have been put in place by the petitioners. The notice is issued apparently at the instance of and on the complaint given by respondent No.5. The petitioners take serious objection to the 2nd paragraph of the notice impugned, which reads thus:

“Therefore, you are hereby directed to remove the unauthorized wall constructed in place of old existing gate and reopen the gate for the use of other flat owners within (3) days from the date of receipt of this notice, failing which this office will remove the same departmentally and expenses thereof will be recovered from you”.

According to petitioners, the very notice issued by 2nd respondent amounts to interfering with the disputes of flat owners of Sai Sharan Apartments, Bhaskar Rao Nagar, Kapra and the alleged deviations referred in the notice, in fact, are not in existence and further direction to demolish these non-existing constructions etc., is unsustainable in law.

This is a dispute between one of the neighbours of apartment and petitioners herein. Every allegation made by petitioners is stoutly denied. As it is a case of much ado about nothing, this Court

is called upon to decide all the issues under Article 226 of the Constitution of India. This Court is not prepared to exercise its discretion or jurisdiction for the Deputy Commissioner if notices deviation of building plan or change of structures; closure of entry and exit etc., he can certainly enquire into the matter, afford opportunity to both the parties and pass orders in accordance law. According to respondents, opportunity was afforded to petitioners and the Deputy Commissioner has to pass the order. But the petitioners are denying the stand of respondents. The apprehension now expressed by petitioners, however, is allayed by the statement made by Mr. Pasham Krishna Reddy that Deputy Commissioner will afford opportunity to both the parties before a decision is taken. The statement is placed on record and the writ petition is disposed of as follows:

- (a) the petitioners are given liberty to file, within three weeks from today, the detailed representation together with evidence in support of their case and serve a copy of the representation to respondents 4 and 5 by registered post with acknowledgement due;
- (b) the Deputy Commissioner after receiving the representation affords opportunity to petitioners as well as respondents 4 and 5 and disposes of the notice in accordance with law;
- (c) till a decision is taken and communicated to both the parties, coercive steps are not taken;
- (d) deviation noticed by the Deputy Commissioner, if ordered to be removed, the petitioners will forthwith obey the order of Deputy Commissioner; and remove the deviation/

obstructions. The petitioners, if fail to remove the obstructions as directed by Deputy Commissioner, the obstruction is removed at the cost and expense of petitioners;

- (e) the said exercise shall be completed within four weeks from today.

There shall be no order as to costs.

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

19th March, 2018
Lrkm

S. V. BHATT, J

