

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

WRIT PETITION No.6639 of 2018

ORDER:

Heard the learned counsel for petitioner, learned Government Pleader for Municipal Administration appearing for 1<sup>st</sup> respondent, Sri V.Narasimha Gowd, learned Standing Counsel appearing for respondent Nos.2 to 4 and Sri G.Narender Reddy, learned Standing Counsel for 5<sup>th</sup> respondent.

2. Aggrieved by the order dt.02-02-2018 passed by the 2<sup>nd</sup> respondent rejecting petitioner's building permission, this Writ Petition has been filed.

3. The following reasons had been given in the order dt.02-02-2018 by the 2<sup>nd</sup> respondent:

| Sl.No. | Particulars | Setbacks              |                        | Remarks              | Defects observed as per physical verification                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------|-------------|-----------------------|------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        |             | As per rules (Cellar) | As per ground (Cellar) |                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 1      | North       | 1.5 Mtrs              | 0.25 Mtrs              | 1.25 Mtrs shortfall  | The petitioner has not removed the RCC retaining wall, steel beams and scaffolding made in the mandatory setback area of 1.50 Mtrs. The applicant has not attended the restoration of mandatory side set back(1.50 Mtrs) and not removed the structures in the setback area all along the site under reference which is contrary to G.O.Ms.No.168 MA dt.07-02-2012 even after opportunity given by the Hon'ble Court, the petitioner has failed to follow the instructions. |
| 2.     | South       | 1.5 Mtrs.             | 0.6 Mtrs.              | 0.90 Mtrs short fall | The mandatory 1.50 Mtrs. Setback for cellar portion is covered with RCC retaining wall and also scaffolding structures with steel beams. The applicant has not removed the violated structures which is contrary to the                                                                                                                                                                                                                                                     |

|   |                           |                 |                                                                       |                 |                                                                                                                                                 |
|---|---------------------------|-----------------|-----------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                           |                 |                                                                       |                 | <i>G.O.Ms.No.168 MA, dt.07-04-2012 even after opportunity given by the Hon'ble Court, the petitioner has failed to follow the instructions.</i> |
| 3 | <i>East (Road facing)</i> | <i>1.5 Mtrs</i> | <i>Min-0 Mtrs<br/>(N-E corner)<br/>Max-4.54 Mtrs<br/>(S-E corner)</i> | <i>1.5 Mtrs</i> | <i>Partly removed the RCC slab to a depth of 19'-3' instead of 20'-0' as required as per rules.</i>                                             |
| 4 | <i>West</i>               | <i>1.5 Mtrs</i> | <i>2.9 Mtrs</i>                                                       | —               | —                                                                                                                                               |

4. After said order has been passed, the petitioner has rectified even according to the HMDA the short falls shown on the northern and southern side referred to above to be in conformity with G.O.Ms.No.168 MA, dt.07-04-2012 by covering the portion in between the two retaining walls by filling with soil for maintaining the minimum all around setbacks for cellar portion i.e. 1.5 mtrs, which is prescribed in Rule 13(x) of the said G.O.

5. This can be seen from the letter No.002168/MED/C1/U6/HMDA/19072017 dt.09-04-2018 of the HMDA submitted to this Court after fresh inspection was done by its Director (Planning)-II. However, in the said letter, as regards eastern side in the cellar, it is stated that the petitioner partly removed the RCC slab to a depth of 19'03" instead of 20'.0" as required by the Rules and that he had not constructed retaining wall on the eastern side i.e. facing NH-7 and had not filled the same for achieving minimum 1.5 mtrs setbacks for Cellar.

6. Learned Standing counsel for HMDA is unable to show any provision in G.O.Ms.No.168 dt.07-04-2012 which mandated an applicant for building permission to show 20' depth in the cellar as per G.O.Ms.No.168 nor any requirement in the said G.O. that there ought to put a retaining wall too. He also does not dispute that petitioner has left a setback of more than 1.5 Mtrs in the cellar as required by Rule 13(x) of G.O.Ms.No.168 dt.07-04-2012.

7. In this view of the matter, the insistence of the HMDA that there ought to be a retaining wall on the eastern side facing NH-7 in the cellar and there should be a depth of 20' within the cellar as demanded by 2<sup>nd</sup> respondent, is contrary to law.

8. Therefore, respondent Nos.2 and 3 are directed to consider petitioner's application for building permission within three (03) weeks without reference to the building of retaining wall in eastern side in the cellar facing NH-7 or the petitioner providing depth of 20' in the cellar in accordance with the above G.O.

9. The Writ Petition is disposed of with the above directions. No costs.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 10-04-2018

**Note :** Issue C.C. in three (03) days.

B/o.

Vsv