

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Writ Petition No.7493 of 2018

ORDER :

Heard the learned counsel for the petitioner and Sri M.Balaji learned standing counsel from written instructions in offering to appear for respondents 2 and 3-Vijayawada Municipal Corporation, and the learned Govt. Pleader for Municipal Administration for R.1 and perused the prayer in the writ petition with the supporting affidavit and the material on record.

2. The prayer in the Writ Petition reads as follows:-

“To issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in issuing the notice U.C.No.01/2018 as illegal, arbitrary, unjust and in violation of Article 14 of the Constitution of India and consequently to set aside the same and to pass such other order or orders”

3. It is the supporting affidavit averment that the petitioner is owner of bearing D.No.27-13-18 admeasuring 74sq.yards with ground+ first floor building which he got through registered gift deed No.3086/2005, dt.25.08.2005 and said construction was of the year 1978 as per the permission from municipal authorities dt.09.06.1978. The petitioner applied for remodelling of construction and obtained sanction plan that was granted on 13.02.2006 and as he could not carry out said construction pursuant to the approved plan supra, he is residing in the old construction and at the instance of the neighbours, the respondents 2 and 3 got issued notice u/ sec.452 of the Greater Hyderabad Municipal Corporation Act,1955 (for short, 'the Act') on 12.02.2018 seeking explanation within 7 days with a direction to stop construction, for which he approached the municipal authorities and explained of no new construction is made and it was of the year 1978 which is with no

violation however the R.2 cause issued notice u/ sec.636 of the Act, on 22.03.2018 to remove the unauthorized construction within 24 hours, else to remove the construction and said notice is impugned now as unjust, arbitrary and contrary to the principles of natural justice.

4. The written instructions show that the building bearing D.No.27-13-18 supra is situated in a site area of 62.12sq.metres and originally the property was sub-divided from a property of 124sq.metres and the petitioner constructed with deviation to the building permission, in B.A. No.30/ 2006 dt.13.03.2006 granted to him for ground and first floor and he constructed the building in deviation to the permission supra without leaving setbacks and neighbours also complained in this regard and after verification and on noticing of the deviations in the above approved plan No.30/ 2006, the notice u/ sec.456 of the Act was issued on 12.02.2018 but no explanation to it was received which made them to issue notice u/ sec.636 of the Act on 22.02.2018 to remove the unauthorized construction, else they cause remove the same and he cause issued a notice through advocate, dt.28.02.2018 which is not satisfactory regarding the existing unauthorized construction and thereby from the complaint filed by the neighbours and on verification finding no set backs left to the construction made pursuant to the plan of 2006 for the violations from the show cause notice with no proper reply, final notice issued and it is the submission that the demolition was carried to the extent of the deviations on 06.03.2018 (yesterday) for not leaving setbacks.

5. Having regard to the above as the so called setbacks were not left as per the permission while making construction, the same is lead to issue the impugned notice, dt.22.02.2018 to carry out demolition of constructions that were made in the area covered by the setbacks to be

left, considering the same as a provisional notice, the petitioner is directed to submit any of his reply/ explanation within one week from the date of receipt of the order from which the respondents shall pass, by virtue of this order, final order and in the meantime not to take any further coercive steps to demolish any of the existing building. It is made clear that the petitioner is not entitled to make any further construction meantime.

6. Accordingly and in the result, the Writ Petition is disposed of. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date:07.03.2018
vvr



Dr. B. SIVA SANKARA RAO J,