

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.8132 of 2018

ORDER:

Heard learned counsel for the petitioners, learned Government Pleaders for Municipal Administration and Revenue appearing for respondent Nos.1, 2 and 5 respectively and Sri A.Pandu Ranga Rao, learned Standing Counsel offers to appear from the oral instructions on behalf of respondents 3 and 4 and perused the prayer in the writ petition with supporting affidavit, the impugned endorsement of respondent No.3-Guntur Municipal Corporation, dated 05.03.2018, judgment in Writ Appeal No.21 of 2018 dated 05.01.2018 and the explanation of the petitioner dated 24.02.2018 acknowledged by the office of respondent No.3 as complaint No.2018-15569753.

2. The prayer in the writ petition reads as follows:

“.....to issue any appropriate writ or order or direction or particularly one in the nature of writ of mandamus, declaring the impugned notice in U.C.No.1/ 18 dated 22/ 02/ 2018 and subsequent endorsement dated 05/ 03/ 2017 of the Commissioner, Municipal Corporation, Guntur, 3rd respondent call upon the petitioners to remove the structures of their houses situated at Door No.20-18-483/2, and Door No.20-18-483/1, D.S.Nagar, 1st Line, Guntur, belongs to the petitioners within 3 days as per the order of the Court is as illegal, arbitrary and contrary to the relevant provisions of Hyderabad Municipal Corporation Act and Judgment in Writ Appeal No.21 of 2018 dated 05/ 01/ 2018, principles of natural justice, without jurisdiction, without following due process of law, not assigned reasons with regard to explanations dated 25/ 06/ 2012 and 24/ 02/ 2008 and also violation of Article 14, 21 and 300A of the Constitution of India and pass such other”

3. It is the submission of the learned counsel for the petitioners pursuant to the prayer in the writ petition from supporting affidavit that respondent No.3-Guntur Municipal Corporation did not even comply with Writ Appeal direction supra. From that, for

the notices already issued by the Municipal Corporation in the year, 2012, the petitioners are directed to submit explanation within two weeks from the date of judgment of the Writ Appeal and if the explanation is not found satisfactory respondent No.3- Municipal Corporation can issue notice under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') and thereafter, take consequent action in accordance with law and if no reply is filed to Section 452 notice by the writ petitioners, it would be open to the Municipal Corporation to issue a Section 636 notice, and thereafter take action in accordance with law and the entire exercise, culminating action being taken shall be completed within six weeks from the date of receipt of copy of that order.

4. It is the submission of the learned counsel for the petitioners that pursuant to that judgment immediately after receipt of the copy within the time fixed therein, their representation dated 24.02.2018 running in three pages, is submitted. One of the submissions therein is that the construction is covered by exemption of the D-Form patta site within 100 Sq.mtrs. area of construction and no permission is required. Thereby, the notice is unsustainable and the premises not liable to be demolished. In the impugned order passed by respondent No.3, dated 05.03.2018, it is simply mentioned the explanation is not proper pursuant to the direction in the judgment of the Writ Appeal, thereby, in directing to remove the construction.

5. The said impugned order, dated 05.03.2018, no way referred the explanation nor it is mentioned that the exemption is not available to the petitioners. Once such is the case, the impugned *lacunae* order is unsustainable.

6. Accordingly, this Writ Petition is allowed by setting aside the impugned order, with a direction to respondent No.3 to pass a reasoned order referring to the explanation and communicate the same within one week from the date of receipt of copy of this order. In the meantime, the respondents are directed not to take any coercive steps. Further remedies are left open.

7. Miscellaneous petitions pending, if any, shall stand closed.
No costs.

Date: 13.03.2018
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Dr. B. SIVA SANKARA RAO, J

