

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No. 12472 of 2009

O R D E R:

This writ petition is filed seeking to issue a writ of *Mandamus* declaring the action of respondents in issuing Notice dated 24.06.2009 as illegal, arbitrary and contrary to the provisions of Sections 428 and 433 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act').

2. The brief facts of the case, according to the petitioner, are that the petitioner's paternal grand mother-late Smt.G.Eswaramma obtained permission in the year 1963 from respondent authorities for construction of residential house with ground + first floor in the subject property situated in Pr.No.1-8-497/3, Chikkadpally, Hyderabad; she constructed the building as per the approved plan; thereafter, she also constructed second floor as per the plan approved by respondent authorities; after her death, as per partition deed dated 09.09.1988, the property fell to the share of the petitioner; while so, on the complaint given by somebody, respondent No.1 gave a notice dated 07.02.2009 under Section 452 of the Act stating that the

petitioner unauthorisedly constructed second floor over the existing old building of ground and first floor without obtaining permission from respondent No.1; the petitioner submitted a representation to respondent No.1 on 16.02.2009 stating that the second floor has been constructed by her paternal grand mother during her life time after obtaining due permission from the Municipal Corporation in the year 1966; thereafter, respondent No.1 issued the impugned notice dated 24.06.2009 under Section 636 of the Act, directing the petitioner to pull down/ remove the unauthorized construction of 2nd floor and partly 3rd floor against the provisions of Section 428 and 433 of the Act within three days from the date of receipt of the copy of the notice, failing which, the respondent authorities will be constrained to remove the same by recovering the expenditure incurred thereto and questioning the same, the present writ petition is filed by the petitioner.

3. Heard learned counsel for petitioner and learned Standing Counsel appearing for respondents. No counter affidavit has been filed on behalf of the respondents.

4. Learned counsel for the petitioner would contend that pursuant to the notice dated 07.02.2009, the petitioner submitted reply dated 16.02.2009 to the respondent authorities. Further, the impugned notice dated 24.06.2009 deals with construction of third floor, whereas, notice dated 07.02.2009, issued under Section 452 of the Act deals with unauthorized construction of 2nd floor on the subject property and after receipt of the impugned notice, the petitioner stopped construction of 3rd floor. In these circumstances, the learned counsel sought for a direction to the respondent authorities to consider the reply that is to be submitted by the petitioner pursuant to the impugned notice.

5. Notice dated 07.02.2009 issued under Section 452 of the Act, states that the petitioner has unauthorizedly constructed second floor over the existing old building of ground and first floor. The impugned notice dated 24.06.2009, states that no reply has been given to the said notice dated 07.02.2009 and that the unauthorised construction has not been removed. Even though a copy of the reply dated 16.02.2009 has been filed, there is no acknowledgment on the same.

6. The impugned notice further states that the petitioner proceeded with the construction and also laid a part of the 3rd floor without any permission and directed the petitioner to pull down the same along with 2nd floor within three days. Notice dated 07.02.2009 issued under Section 452 of the Act, does not speak about the 3rd floor, whereas notice dated 24.06.2009 issued under Section 636 of the Act speaks for the first time about the 3rd floor, and directs it to be pulled down along with 2nd floor.

7. The learned counsel for the petitioner submits that the petitioner would file a reply to the notice dated 24.06.2009 issued under Section 636 of the Act, within a period of two weeks from the date of receipt of the copy of the order. On receipt of such representation, the respondents are directed to consider and dispose of the same in accordance with law. If any reply/representation is filed as mentioned above, till the reply/representation of the petitioner is disposed of no coercive steps should be taken against the petitioner. If no such reply is filed to the notice dated 24.06.2009 issued under section 636 of

the Act, within the specified period as mentioned above, the respondents are at liberty to take action in accordance with law.

8. Accordingly, the writ petition is disposed of. No cost.

9. Miscellaneous Petitions, if any pending, shall stand closed.

24th October, 2018
Mjl/*

KONGARA VIJAYA LAKSHMI, J

