

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.19284 of 2018

ORDER:

Heard both sides.

2. The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent No.2 in issuing notice Lr.No.2010/TPS/Cir.-20/ACP/WZ/GHMC/2017, dated 10.01.2018 under Section 405 of GHMC Act, directing the petitioner to remove the retaining wall constructed by respondent No.4, as illegal and arbitrary.

3. The petitioner was allotted plot No.177 by Andhra Pradesh Housing Board, vide letter dated 20.09.2001, and thereafter a registered sale deed was executed in his favour. The petitioner also purchased the neighboring plot bearing No.178 from the allottees of A.P.Housing Board. When the layout was prepared, the road level in front of plot No.177 and 178 was naturally laid and the road running from East of plot Nos.177 and 178 was terminated. The houses after the dead end are provided with a different access. As there was a difference of level in height and the area after plot Nos.177 and 178 is a low lying upto 15 feet, a retaining wall was constructed separating both the areas, in the interest of the respective plot owners. This was done in the year 1997-1998. Thereafter, the petitioner constructed a house, after obtaining necessary permission. While things stood thus,

respondent No.2 issued a notice dated 10.01.2018, under Section 405 of the Greater Hyderabad Municipal Corporation Act (for short 'the Act') calling upon the petitioner to remove the temporary structure and the retaining wall constructed by blocking the thoroughfare road, as per the approved layout within 24 hours, failing which the GHMC would be constrained to remove the same under Section 405 of the Act and expenditure so incurred would be recovered from the petitioner as per the Act.

4. Sri C.Raghu, learned counsel for the petitioner mainly submits that question of petitioner removing the retaining wall will not arise as it was in existence even on the date when plot was allotted to the petitioner. It is his plea that the said wall came to be raised only to protect the two plots in view of the difference in level of both the plots and also to protect soil erosion to the neighbouring plot owners, thereby causing inconvenience to them.

5. A counter came to be filed by the Executive Engineer (Housing), North Division, Telangana Housing Board – respondent No.4 stating that as per the records, House No.177/HIG-B, Gachibowli, was allotted by the erstwhile A.P.Housing Board to the petitioner, on Hire-Purchase Scheme and on payment of the entire cost. A registered Sale Deed dated 22.03.2007 bearing document No.4709/2007, came to be executed in favour of the petitioner by the A.P.Housing Board. As regards House No.178, HIG-B, at Gachibowli, it was allotted to one Sri M.Venumadhav, by the

erstwhile A.P.Housing Board on Hire Purchase basis and after payment of the entire cost, a registered sale deed dated 23.03.2004, bearing document No.3518/2004 was executed in his favour. With regard to raising of the retaining wall, it is stated that Housing Board has prepared a layout for an Integrated Housing Scheme at Gachibowli, which was approved by HUDA vide permit No.4103/P2HUDA/90, dated 01.02.1991. It is said that a 33' wide road in front of plot Nos.177 and 178 was provided and continued to provide a thoroughfare. It is stated that due to difference in levels, a road was laid only till plot Nos.177 and 178 and subsequently a retaining wall was also constructed therein by the A.P.Housing Board. It would be useful to extract the relevant para, since the entire dispute relates to raising of the retaining wall, which reads as under:

“3. I respectfully submit with regard to the averments contained in paragraph 5 of the affidavit of the petitioner that the A.P.Housing Board has prepared a layout for an Integrated Housing Scheme at Gachibowli which was approved by HUDA vide permit No.4103/P2/HUDA/90, dated 01.02.1991. 33' wide road in front of Plot Nos.177 & 178 should continue and provide thoroughfare. However, due to the difference in the level thereafter, the road was laid only till after plot Nos.177 & 178 and not laid thereafter and a retaining wall was constructed there by APHB.”

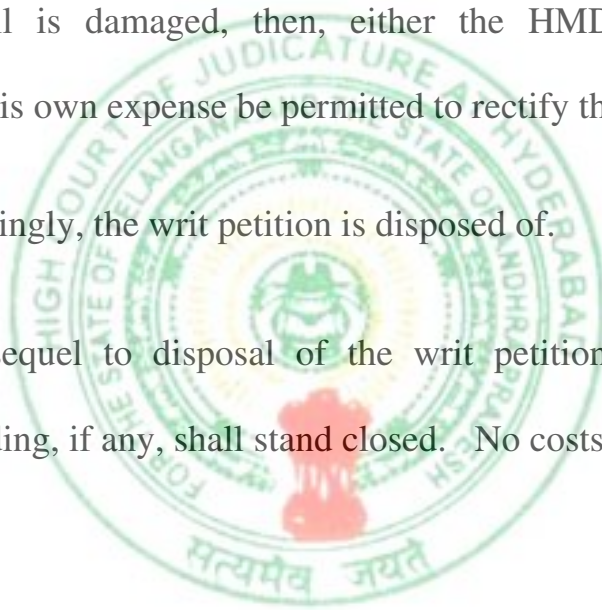
6. From the above, it is clear that the retaining wall, which is subject matter of impugned notice, was raised by the A.P.Housing Board and was in existence even at the time when plots were allotted

to the allottees. Insofar as raising the temporary shed, learned counsel for the petitioner would submit that same was raised at the time of constructing the house and that it would be removed.

7. In view of the aforesaid reasons, the impugned notice is set aside to the extent of directing the petitioner to remove the retaining wall. But insofar as the temporary shed is concerned, the petitioner shall remove the same forthwith, which should be done within three months from the date of receipt of this order. If for any reason the retaining wall is damaged, then, either the HMDA or the writ petitioner at his own expense be permitted to rectify the same.

8. Accordingly, the writ petition is disposed of.

9. As a sequel to disposal of the writ petition, miscellaneous petitions pending, if any, shall stand closed. No costs.



C. PRAVEEN KUMAR, J

01.11.2018
vhh