

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.29579 of 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking a Writ of Mandamus declaring the action of the third respondent in passing the orders vide Rc.No.2146/2016/G2, dated 26.08.2016, without considering the objections filed by the petitioner to the eviction notice, dated 04.05.2016, under Section 406 of the Hyderabad Municipal Corporation Act, as illegal, arbitrary and violative of the principles of natural justice & the provisions of the Constitution of India and to set aside the same. A consequential direction is also sought to direct the respondents not to demolish the house (balcony) of the petitioner bearing D.No.21/48 at Tilak Road, Old Town, Anantapuramu.

I have heard the submissions of Sri M.Karibasaiah, learned Counsel for the petitioner, and of the learned Standing Counsel for the Anantapuramu Municipal Corporation, appearing for respondents 3 and 4.

From the pleadings, facts and submissions, the following facts are discernible.

Earlier to this Writ Petition, when the aforestated notice, dated 04.05.2016, was issued, the writ petitioner along with five other similarly situated persons filed W.P.No.16379 of 2016 seeking a writ of mandamus declaring the action of the respondents in demolishing the subject houses therein (balconies) of the petitioners therein as illegal, arbitrary and violative of the principles of natural justice and

sought for a consequential direction to set aside the impugned notices issued by the third respondent. By order, dated 14.07.2016, this Court disposed of the said Writ Petition. The operative portion of the said order reads as follows:

“In view of the submissions made and having regard to the circumstances of the case, without going into merits of the case, the petitioners are directed to submit explanation by treating the impugned notices as show-cause notices, within a period of 3 weeks from today, in which event, the authorities shall pass appropriate orders in accordance with law after giving opportunity of hearing to the petitioners as early as possible. Till such time, the respondents shall not take any coercive steps either for demolition of the structure in the subject premises or dispossession of the petitioners therefrom.”

Undisputedly, the petitioner submitted his explanation/objections to the notice, dated 04.05.2016. However, according to the submissions of the petitioner, the impugned proceedings have come to be passed, without considering the said objections and without following the directions in the orders of this Court in the aforesaid Writ Petition. Aggrieved thereof, this Writ Petition is filed.

Learned Counsel for the petitioner submits that in view of the fact that the explanation/objections is/are not considered and the order has come to be passed without following the directions of this Court in the earlier Writ Petition, the petitioner is entitled to the relief, as prayed for.

Learned Standing Counsel for the Municipal Corporation submits that after the explanation was submitted only, the impugned order was passed.

By the impugned proceedings, the petitioner was directed to remove the encroachments voluntarily within two days from the date

of the proceedings and it was, *inter alia*, stated that on failure of the petitioner so to do, the office of the third respondent would remove the encroachments departmentally and collect the charges for such removal from the petitioner.

In view of the orders of this Court, the third respondent ought to have followed the directions therein and ought to have issued the proceedings only after considering the objections and affording an opportunity of hearing to the petitioner. Since the same was not done, this Court is of the considered view that the Writ Petition deserves to be allowed.

In the result, the Writ Petition is allowed as prayed for, however, reserving the liberty to the third respondent to consider the matter afresh after taking into consideration the objections/explanation of the petitioner and affording the opportunity of hearing. It is needless to state that till such exercise is completed, the respondents shall not take any coercive steps either for demolition of the structures in the subject premises or for dispossession of the petitioner therefrom.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

25.06.2018
vs