

THE HONOURABLE SRI JUSTICE P. KESHA RAO

**WRIT PETITION Nos. 32850, 33103, 34775, 34781, 43488 OF
2016 AND WRIT PETITION No.33815 of 2016**

COMMON ORDER:

Heard the learned counsel appearing for the petitioners in writ petition Nos. 32850, 33103, 34775, 34781, 43488 of 2016 and 33815 of 2016 as well as the learned Standing Counsel appearing for Vijaywada Municipal Corporation.

Since the issue is common in all the above said writ petitions, with the consent of both the counsel in all these writ petitions, the common order is being passed.

In all the writ petitions, the grievance of the petitioners is that the Vijayawada Municipal Corporation represented by its Commissioner, is taking coercive steps for demolition of the structures raised by them in respective premises bearing D.No.28-24-30/1, situated at Hussain Saheb Street, Arundalpet, Vijayawada; Door No.29-1-13, Malladivari Street, Governorpet; Door (old) No.41-20/1-23, Gunturuvari Street, Krishna Lanka, Vijaywada; D.No.61-25/4/7A, situated at Eenadu Colony, Ramalingeswara Nagar, Krishna Lanka, Vijayawada; Door No.67-3-4 situated at Patamata of

Vijaywada Municipal Corporation; D.No.30-5-3, situated at Koka Chalapati Rao Street, Durga Agraharam, Vijayawada, Krishna District.

As far as the writ petition No.32850 of 2016 is concerned, the petitioner therein has obtained permission for construction of ground plus first floor, but he has unauthorisedly raised second and third floors for which a notice was issued under Section 452 of Greater Hyderabad Municipal Corporation Act, 1955 (for brevity "Act") *vide* U.C.No.12/I/VII, dated 19.3.2016 calling upon the petitioner to show cause as to why action shall not be initiated for unauthorized constructions of second and third floors. However, the learned counsel for the petitioner would submit that the Corporation have received a sum of Rs. 50,000/- for each floor towards penalty against the unauthorized construction of second and third floors *vide* receipt bearing No. B.A.No.1073/0071/B/VMC/ARA/ 2016/T.P.B.O. VII, dated 26.05.2016. As such, after receipt of the said penalty, it is not open for the Corporation to issue a notice under Section 452 of the Act.

Per contra, the respondent No.2-Corporation filed counter affidavit stating that the petitioner has

voluntarily paid penalty amount of Rs.1,00,000/- and just because of the payment of penal amount is received by the Corporation, it cannot be said that the said unauthorized construction is waived of and the Corporation cannot take any action.

As far as Writ Petition No.33103 of 2016 is concerned, the learned counsel appearing for the petitioner therein would contend that the respondent No.2-Corporation without issuing any notice under Section 452 of the Act, is trying to demolish the premises bearing Door No.29-1-13, situated at Malladivari Street, Governorpet, Vijaywada though the Corporation have collected a sum of Rs. 2,00,000/- towards penalty against the unauthorized constructions.

As far as Writ Petition No.34775 of 2016 is concerned, the learned counsel appearing for the petitioner therein would contend that the respondent No.2-Corporation, without resorting to mandatory procedure as contemplated under provisions of the Act, is trying to demolish the structures raised in the premises bearing Door No.(Old) 41-20/1-17/1 & 2, corresponding new No.41-20/1-23 situated at Guntur vari Street, Krishna Lanka, Vijayawada. He would

further contend that the Corporation have already received a sum of Rs. 60,000/- towards penalty for the unauthorized construction and that after receipt of the said penalty, the Corporation have issued a notice under Section 452 of the Act, *vide* U.C.No.Nil/2016, dated 24.9.2016. However, an explanation has been submitted to the said notice.

As far as writ petition No.34781 of 2016 is concerned, the learned counsel for the petitioner therein would contend that the respondent No.2-Corporation is trying to demolish the structures raised by him in premises bearing Door No.61-25/4/7A, Eenadu Colony, Ramalingeswara Nagar, Krishna Lanka, Vijayawada, Krishna District in spite of payment of Rs. 60,000/- towards penalty for the unauthorized construction. He also would contend that after receipt of the said penalty, the Corporation have issued a notice under Section 452 of the Act *vide* UC No. Nil/2016, dated 24.9.2016. However, an explanation has been submitted to the said notice.

As far as Writ Petition No.43488 of 2016 is concerned, the learned counsel appearing for the petitioner therein would submit that the respondent No.2-Corporation is trying to demolish the structures

raised by the petitioner in premises bearing New Door No.67-3-4, situated at Patamata of Vijayawada Municipal Corporation, pursuant to issuance of notices under Section 452 of the Act. Pursuant to the notices dated 4.11.2016 and 6.12.2016, the petitioner has submitted an explanation dated 18.11.2016. However, no orders have been passed till date.

As far as Writ Petition No.33815 of 2016 is concerned, the learned counsel appearing for the petitioner therein would contend that the respondent No.2-Corporation is making efforts to demolish the premises bearing D.No.30-5-3, situated at Koka Chalapati Rao Street, Durga Agraharam, Vijayawada. He would contend that the petitioner was issued a notice under Section 452 of the Act, dated 28.01.2016 by the respondent No.2-Corporation as to why the said unauthorized construction should not be demolished. Pursuant to the said show cause notice, the petitioner got issued a reply, dated 1.10.2016 through his counsel. He also would contend that the petitioner has paid a sum of Rs. 1,00,000/- as penalty for each floor i.e., in toto Rs.3,00,000/-. As such, the respondent No.2-Corporation after collection of penalty cannot demolish

the structures raised by him in the premises bearing D.No.30-5-3.

Per contra, the learned Standing Counsel appearing for the respondent No.2-Corporation, in all the above said writ petitions, based on the counter affidavits filed would submit that the respondent No.2-Corporation have issued statutory notice under Section 452 of the Greater Hyderabad Municipal Corporation Act, 1955 seeking explanation from the petitioners as to why the unauthorized structures should not be demolished. Pursuant to the said notices, the above said writ petitions have been filed.

As far as the payment of penal amount is concerned, the learned Standing Counsel disputed that the amounts were not voluntarily received by the Corporation, but the petitioners have paid the amounts through a cash counter. Be that as it may, he would further contend that the payment of the said penal amounts would not waive the unauthorized construction for being regularized or it cannot be said that the Corporation cannot take any further action. Since the respondent No.2-Corporation have already issued the statutory notices under Section 452 of the Act, all the

petitioners are obligated to submit detailed explanations warranting the respondent No.2- Corporation to pass appropriate orders based on the material available on record and as per law. Without passing any orders on the detailed explanations submitted by the petitioners, the respondent No.2-Corporation cannot take any coercive steps for demolition of the unauthorized constructions.

In these circumstances, this Court is of the opinion that all the writ petitions can be disposed of directing the respondent No.2-Corporation to consider the explanations submitted by the petitioners pursuant to the notices issued under Section 452 of the Act and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. If any petitioner have not submitted the explanation, he may do so within three weeks from the date of receipt of the order copy. It is needless to observe that until such orders are passed, the respondent No.2-Corporation is directed not to take any coercive steps to demolish the structures raised by the petitioners in their respective premises. It is also observed that under the guise of pendency of passing of the said orders by the respondent No.2-Corporation, the petitioners cannot proceed with further constructions.

If the constructions made by the petitioners are within the parameters of the orders issued by the Government for regularization of the buildings, the same may also be considered by the respondent No.2-Corporation, while passing the orders.

With the above directions, all the writ petitions are disposed of. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.



JUSTICE P. KESHA RAO

Date: 24.04.2018
Slk

THE HONOURABLE SRI JUSTICE P.KESHA RAO



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