

THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.32040 OF 2016

ORDER:

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

The prayer in the writ petition is as under:-

“.....to issue a Writ, Order or Direction particularly a Writ in the nature of mandamus directing the respondent Nos.2 to 5 herein to take action on the representations made by the petitioner dated 28.10.2015, 20.11.2015, 02.12.2015 and 17.12.2015 as per Greater Hyderabad Municipal Corporation Act and consequently direct the respondent Nos.2 to 5 herein to demolish the illegal constructions made by the Respondent Nos.6 to 8 herein in the house bearing D.No.12-7-138/4, New Mettuguda, Secunderabad by taking action on the representations made by the petitioner dated 28.10.2015, 20.11.2015, 02.12.2015 and 17.12.2015 by maintaining proper setbacks in the house bearing D.No.12-7-138/4, New Mettuguda, Secunderabad.”

The facts of the case are that the petitioner is an absolute owner and possessor of the house bearing door No.12-7-138/4, New Mettuguda, Secunderabad and she is in peaceful possession and enjoyment of the same. Respondents 6 to 8 herein, who are the immediate neighbours to the petitioner, are making illegal construction of a house consisting of ground + two floors in door No.12-7-138/4, plot No.87/1, New Mettuguda, Secunderabad without leaving any setbacks which is contrary to the sanctioned plan. With the consent of the petitioner, the respondents removed the compound wall in a phased manner to suite their convenience and with a malafide intention, they grabbed 4 ½ inches of the petitioner's land. In these circumstances, the present writ petition is filed.

Learned Standing Counsel appearing for respondents 2 to 5 would submit that respondents 6 to 8 have obtained permission for construction

of ground + first floor *vide* permission No.37947/DC/C-18/NZ/2014, dated 18.11.2014. However, contrary to the sanctioned plan, the respondents have constructed one extra floor on the permitted floors and without leaving any setbacks. He also brought to the notice of this Court that respondents 6 to 8 have submitted an application for regularization of the building under Building Regularisation Scheme *vide* application I.D.No.2000008867 on 11.12.2015.

However, learned counsel appearing for the petitioner contends that the entire construction was not completed before the cutoff date i.e., 31.10.2015.

Be that as it may, in similar circumstances, a Division Bench of this Hon'ble Court in PLNo.63 of 2016 considered the issue and passed the following order:-

"We consider it appropriate, in such circumstances, to modify the earlier order, and direct that the applications for regularization be processed in accordance with the regularization scheme notified in G.O.Ms.No.152 dated 02.11.2015. In case the GHMC or the other Municipal Corporations in the State of Telangana, after considering the applications for regularization, decide to reject the request for regularization, it is open to them to communicate the orders of rejection to the applicants concerned, and thereafter take action for demolition of the illegal structures in accordance with law. In such of those cases where the GHMC, or the other Municipal Corporations, tentatively decide to regularize the illegal structures, such a decision shall merely be recorded in the file, and shall neither be given effect to nor shall it be communicated to the applicants, pending further orders from this Court."

Therefore, in the light of the same, respondents 2 to 5 are directed to consider and pass appropriate orders on the application filed by respondents 6 to 8 to regularize the constructions made in premises No.12-7-138/4, plot No.87/1, New Mettuguda, Secunderabad. While considering the application, respondents 2 to 5 are directed to give an opportunity of hearing to the petitioner as well as respondents 6 to 8.

During the course of consideration, if respondents 2 to 5 are of the opinion that the application does not deserve any consideration, the same can be rejected and appropriate action may be initiated by issuing requisite notices for demolition of the unauthorized structure raised which includes the deviated portions. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order. It is needless to observe that if the application is considered and positive orders are passed regularizing the structures, the order passed shall be kept in abeyance after recording in the file which will be subject to result in the PIL pending consideration in this Court.

With the above direction, the Writ Petition is disposed of. No costs.

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

JUSTICE P.KESHAVA RAO

Date : 17.04.2018
ssp

