

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26277 of 2018

ORDER:

Heard the learned counsel for the petitioner and Sri Sampath Prabhakar Reddy, learned Standing Counsel for Respondent Municipal Corporation.

2. Notice issued under Section 636 of Hyderabad Municipal Corporation Act, 1955 bearing No.36/UC/W.No.19/TPS/C-5/LBN/GHMC/2018 dated 21.7.2018, directing removal of construction in premises bearing No.11-4-126 (old) 11-5-151 (new) situated at Venkateshwara Colony, Saroornagar, Hyderabad is under challenge in the present writ petition.

3. On the complaint made by 5th respondent herein, the Respondent Municipal Corporation issued a notice to the petitioner under Section 452(1) and 461(1) of GHMC Act vide Letter No.UC/151/W.No.19/ACP/TPS/C3B/GHMC/2016 dated 8.8.2016, pointing out certain alleged illegal and unauthorised constructions while asking the petitioner to submit explanation/reply within (7) days. According to the petitioner, he submitted his representation by way of legal notice dated 18.8.2016 and the same was received by the office of Deputy Commissioner, Circle-3B, GHMC, East Zone, L.B.Nagar, Hyderabad on 23.8.2016. Now the Deputy Commissioner, Circle-V, Saroornagar issued the impugned notice dated 21.7.2018 under Section 636 of HMC Act, directing the petitioner herein to remove the constructions within 24 hours. According to the learned counsel for the petitioner, the impugned notice is highly illegal, arbitrary, unreasonable and violative of Article 14 and 300-A of the Constitution of India. In elaboration, it is further submitted by the learned counsel that though the petitioner herein submitted

explanation on 18.8.2016, the Respondent authorities did not consider the contents of the said explanation from proper perspective. In support of his submissions and contentions, the learned counsel for the petitioner places reliance on the judgment of this Court in *Amba Bai Tiwari v. The Special Officer, Municipal Corporation of Hyderabad, Hyderabad and another*¹ and *Municipal Corporation of Hyderabad, rep. by its Special Officer, Hyderabad v. Shamsuddin Hasan Khudankmai and another*².

4. On the other hand, it is submitted by the learned Standing Counsel appearing for the Respondent Municipal Corporation that pursuant to the orders of this Court in W.P.M.P.No.30609 of 2016 in W.P.No.24790 of 2016 dated 2.8.2016, the Respondent authorities are taking the action under challenge. It is further submitted by the learned Standing Counsel that only after issuing show cause notice and calling for explanation, the impugned notice came to be issued and the petitioner herein has failed in making any case, warranting interference of this Court under Article 226 of the Constitution of India.

5. In fact, it is required to be noted that earlier vide proceedings Order No.UC/151/W.No.19/ACP/TPS/C3B/GHMC/2016 dated 12.9.2016, the Respondent Corporation directed the petitioner herein to remove the unauthorised constructions. It is also evident from the said order dated 12.9.2016 that the legal notice dated 18.8.2016 got issued by the petitioner by way of explanation was not noticed prior to issuing the final notice under Section 636 of GHMC Act.

6. A perusal of the impugned notice reveals that except referring to the reply submitted by the petitioner herein through Advocate on 18.8.2016,

¹ 1990(1) ALT 23

² 1978(1) APLJ 459

there is absolutely no consideration of the said legal notice/explanation. Since the action proposed to be taken against the petitioner is punitive in nature, the Respondent authorities should have adverted to the contents of the legal notice dated 18.8.2016 while issuing the notice under Section 636 of HMC Act and the same is followed in breach. Therefore, on this ground alone, in the considered opinion of this Court, the matter requires reconsideration by the Respondents herein.

7. Accordingly, the writ petition is allowed, setting aside the Notice issued by the 3rd Respondent under Section 636 of Hyderabad Municipal Corporation Act, 1955 bearing No.36/UC/W.No.19/TPS/C-5/LBN/GHMC/2018 dated 21.7.2018 and the matter is remanded to the 3rd respondent for passing appropriate orders under Section 636 of Hyderabad Municipal Corporation Act, 1955, after considering the contents of the legal notice dated 18.8.2016. It is also made clear that till final orders are passed, no coercive action should be taken against the subject property and the petitioner shall not undertake any further construction. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 27.7.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



27.7.2018

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