

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.40439 of 2015

ORDER:

The present writ petition came to be filed seeking issuance of a writ of *Mandamus* seeking to declare the action of the respondents more particularly the 4th respondent in not taking any action against the unofficial respondent No.5, who was constructed a commercial complex at Door No.4-9-197/B/92, Nacharam, Ranga Reddy District in buffer zone of Pedda Cheruvu, Nacharam, Kapra Municipality, as illegal and arbitrary.

The facts which lead to filing of the present writ petition are as under:

H.M.T Employees Cooperative Building Society Limited purchased the land admeasuring Ac.38.00 gts at Nacharam and after obtaining layout permission from the Gram Panchayat in 1979, constructed houses and allotted the same to its members. For the purpose of construction of the houses, the Society borrowed loan from H.D.F.C Bank, Mumbai Branch, Maharashtra State which was subsequently repaid by the allottees. While things stood thus, the 5th respondent raised a multi-storeyed structure in the buffer zone of Pedda Cheruvu, Nacharam, Ranga Reddy District, which is under challenge in the present writ petition. It is stated that the representation has been made to the authorities for taking action against the 5th respondent, on 17.10.2015, for his illegal construction, but till date no action has been taken and no orders are passed.

On 14.12.2015, this Court issued notice to the 5th respondent, directing the respondents 2 to 4 to file a detailed

counter-affidavit, explaining the reason for their inaction in proceeding against the illegal construction alleged to have been made by the 5th respondent.

Heard the learned counsel for the petitioner, the learned counsel for the 5th respondent and the learned Standing Counsel for the official respondents.

Though no counter-affidavits are filed, on instructions, Sri Sampath Prabhakar Reddy, learned Standing Counsel for the respondents 1 to 4, would submit that on 16.12.2015, a notice under Section 451 of Greater Hyderabad Municipal Corporation Act, 1955 (for short, "the Act"), came to be issued to the 5th respondent, to which she gave a reply to the Commissioner stating that an application came to be filed on 18.12.2015, seeking regularisation of the subject structures and the same is pending consideration. In view of the order dated 18.10.2016, passed by the Division Bench of this Court in W.P.No.5130 of 2016 and batch, learned Standing Counsel for the respondents 1 to 4 would contend that till appropriate orders, in the regularisation application, are made, no action can be taken against the 5th respondent. Learned Standing Counsel for the respondents 1 to 4, placed on record the order of the Division Bench, in support of his contentions.

Learned counsel for the 5th respondent would submit that till orders are passed in the regularisation application, no action can be initiated against the 5th respondent.

In order to appreciate the rule position, it is necessary to refer the order dated 18.10.2016 of the Division Bench in W.P.No.5130 of 2016 and batch:

“The writ petitions are disposed of directing the concerned Municipal Corporations not to take coercive steps, for demolition of the illegal structures raised by the petitioners, provided applications, seeking regularisation under G.O.Ms.No.152 dated 2.11.2015, were submitted by them before the cut-off date specified in the said G.O. or the extended cut-off dates.”

Since the applications came to be made before the cut-off date, Court observed that the Corporation shall not take any steps to demolish the illegal structures till the orders on the regularisation application, are passed. The Court further observed that if the Corporation rejects the regularisation applications, it shall initiate action for demolition of structures, by following due the provisions of the Act and Rules made there under.

Having regard to the fact that an application is said to have been made by the 5th respondent seeking regularisation of the structures made in the subject land before the cut-off date and it is still pending consideration, the respondents 1 to 4 are justified in not taking any action against alleged illegal structures raised by the 5th respondent.

Having regard to the above, the writ petition is disposed of directing the respondents 1 to 4 to deal with the application made by the 5th respondent for regularisation of the structures made in the subject land, in accordance with law, as early as possible, preferably within a period of three months from the date of receipt of copy of this order, after giving reasonable opportunity of hearing to the petitioner, 5th respondent and all concerned and thereafter proceed in terms of the order of the

Division Bench of this Court. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

C. PRAVEEN KUMAR,J

Date:31.10.2018.
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30

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