

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

WRIT PETITION No.30770 of 2018

ORDER:

Heard learned Counsel for the petitioner, Sri N.Ashok Kumar, learned Standing Counsel for the respondent-Municipal Corporation and Sri Pramod Singh, learned Counsel for R.4.

An Order passed by the Assistant City Planner, Circle-14, Central Zone, Greater Hyderabad Municipal Corporation – R.3 vide proceedings No.317/14/UC/ACP/TPS/C14/GHMC/2017, dated 18.08.2018, is under challenge in the present Writ Petition. By way of the said Order, the Municipal Corporation directed the petitioner herein to remove the balconies.

The sum and substance of the case of the petitioner herein, as advocated by the learned Counsel for the petitioner, is that despite the Orders of this Court in W.A.No.861 of 2017 directing the Municipal Corporation to give opportunity of hearing to the petitioner herein, the respondent-Corporation without adhering to the same, passed the impugned Order, dated 18.08.2018. Earlier, the 4th respondent herein filed W.P.No.18344 of 2017 before this Court, and this Court disposed of the said Writ Petition, by way of an Order, dated 08.06.2017, directing the official respondents to consider the representation, dated 06.04.2017, submitted by the 4th respondent and to pass appropriate Orders, in accordance with law. Questioning the said Order, the petitioner herein filed Letters Patent Appeal, vide W.A.No.861 of 2017 and a Division Bench of this Court, disposed of the said Writ Appeal, by way of an Order, dated 27.07.2017, and the operative portion of the said Order reads as under:-

“Mere consideration of a representation cannot be said to have caused substantial injustice to the appellant warranting interference in an intra-Court appeal, under Clause 15 of the Letters Patent. In any event, the interests of the appellant-4th respondent would be adequately safeguarded if the order of the learned Single Judge is modified and the GHMC is directed, on considering the representation of the 1st respondent-writ petitioner, not to take coercive action against the appellant-4th respondent, except after putting her on notice, and after giving her an opportunity of being heard.”

While referring to the above said Order passed by the Division Bench of this Court in the said Writ Appeal, it is contended by the learned Counsel for the petitioner that though the Division Bench directed categorically to afford opportunity of hearing to the petitioner, totally ignoring the same, the respondent-Municipal Corporation authorities, without giving any opportunity of hearing, passed the impugned Order, dated 18.08.2018.

On the other hand, it is submitted by Sri Pramod Singh, learned Counsel, who is taking notice on behalf of R.4, that there is absolutely no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India.

Sri N.Ashok Kumar, learned Standing Counsel, also supported the impugned Order by contending that pursuant to the Orders of this Court in W.A.No.861 of 2017, the respondent-Corporation issued the impugned Order.

During the course of arguments, it is submitted that the competent authority for dealing with the issue is the Deputy Commissioner of the concerned Circle. In view of the same, in order to

put a quietus to this litigation, the Deputy Commissioner of Circle-14, GHMC, Hyderabad, stands impleaded as R.5 *suo motu* by this Court.

Perusal of the impugned Order, dated 18.08.2018, does not disclose anything with regard to giving opportunity of hearing to the petitioner herein and when this Court categorically directed the Corporation to afford opportunity of bearing heard, it is incumbent on the part of the respondent-Corporation to adhere to the same. On the said ground alone, this Court is inclined to allow the present Writ Petition for fresh consideration of the issue by the respondent-Corporation, strictly in accordance with law.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned Order bearing No.317/5/14/UC/ACP/TPS/C14/GHMC/2017, dated 18.08.2018, and the matter is remanded back to the respondent-Municipal Corporation for fresh consideration of the issue and pass appropriate order after giving notices to all the stakeholders. This exercise shall be completed within a period of four weeks from the date of receipt of a copy of this Order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

A.V.Sesha Sai, J

29th August, 2018
smr