

THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No. 3619 OF 2015

ORDER:

This writ petition is filed to declare the action of the 2nd respondent in issuing proceedings No.2/02/ACP-3/EZ/GHMC/2015, dated 13.02.2015 under Section 636 of HMC Act, 1955 without considering the explanation dated 12.02.2015 given by the petitioner to the notice dated 09.02.2015, as illegal and arbitrary.

The case of the petitioner is that he is the owner and possessor of an extent of 1452 sq. yards in Survey No.24 of Lingoiguda, Karmanghat, Hyderabad; he has constructed a house after obtaining sanctioned plan in the year 1996; as per the sanctioned plan, he was permitted to construct stilt + ground + first floor; as there were certain minor deviations in the ground and first floors, the petitioner submitted an application for regularisation of the said deviations by paying the requisite fee; earlier also when the respondents issued a notice under Section 452 of GHMC Act on 19.03.2010, the petitioner submitted a reply on 23.03.2010 and that without considering the said reply, the respondents issued notice on 27.03.2010; aggrieved by the same, the petitioner filed W.P.No.7536 of 2010 and the same was disposed of on 07.04.2010 giving liberty to the petitioner to submit a detailed representation and respondents were directed to consider the representation and pass appropriate orders; the petitioner submitted representation on 15.04.2010 and the said representation was rejected on 03.06.2010; aggrieved by the same, the petitioner filed W.P.No.12783 of 2010 and the said writ petition was dismissed on

17.04.2014; when the respondents demanded for property tax abnormally, the petitioner filed M.A.No.317 of 2013 before the Chief Judge, City Small Causes Court, Hyderabad; the Court below stayed demand notice dated 18.04.2013 on condition of his paying 1/4th of the demanded amount. When the matter stood thus, the respondents again issued notice under Section 452(2) of HMC Act on 09.02.2015 alleging that the Cellar Floor shall be exclusively earmarked for parking, but the petitioner is using for commercial purpose; pursuant to the said notice, the petitioner submitted his explanation on 12.02.2015 stating that the sanctioned plan does not reflect that the stilt floor is earmarked for parking in a private building, which is not sold to any outsider and does not fall within the definition of apartments and that the stilt floor cannot be said to be confined only for usage of parking in the building and that the respondents without considering the representation issued the notice under Section 636 HMC Act on 09.02.2015.

Heard learned counsel for the petitioner and learned standing counsel for GHMC.

Counter affidavit has been filed by the respondents stating that the cellar portion cannot be used for commercial activity as the same is meant for parking.

When the matter came up before this Court on 18.02.2015, order of status quo was passed for limited period and subsequently, it was extended. On 13.04.2015, when the matter came up for hearing, learned standing counsel submitted that the petitioner has obtained permission for residential purpose, but using the same for commercial

purpose. Learned counsel for the petitioner sought time to file approved plan; and this Court specifically observed that if the copy of approved plan is not produced, the writ petition will be dismissed. Even though the matter was listed on several occasions i.e. on 16.11.2015, 22.11.2018, 28.11.2018 and 06.12.2018, no approved plan is produced before this Court.

The proceedings of the respondents dated 13.02.2015 shows that the petitioner made construction in the cellar portion and that the construction in the cellar portion is causing inconvenience to the inmates of the building and also to the general public on the road. The affidavit filed in support of the writ petition does not dispute the said fact. .

In view of the above, the writ petition lacks merit and accordingly, the same is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand dismissed.

KONGARA VIJAYA LAKSHMI, J.

10-12-2018
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