

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 40513 of 2018

AND

WRIT PETITION No.41989 of 2018

COMMON ORDER:

1) Writ Petition No.41989 of 2018 came to be filed by the petitioner seeking issuance of writ of mandamus declaring the action of the respondent No.3 in issuing impugned notice No.317/5/14/UC/ACP/TPS/C14/GHMC/2017 dated 22.09.2018 in rejecting the BRS application of the petitioner dated 28.12.2015 as illegal, arbitrary and consequently set-aside the said impugned notice.

2) Writ Petition No.40513 of 2018 came to be filed seeking issuance of writ of mandamus declaring the action of the respondent No.3 in issuing the impugned orders No.317/5/14/UC/ACP/TPS/C14/GHMC/2017 dated 01.11.2018 rejecting her explanation dated 05.08.2017 and 08.10.2018 as illegal, arbitrary and consequently set-aside the said impugned orders.

3) Since both the Writ Petitions arise out of the proceedings issued against the same property, they are disposed of by this Common Order.

4) The brief facts are as under:-

The petitioner claims to be the owner of the house bearing No.14-5-317 situated at Shah Inayath Gunj, Hyderabad and is said to have constructed ground and first floor in the year 1992. Subsequently, the petitioner claims to have constructed second and third floors and also a pent house. In the year 2015, when the fourth respondent-Government issued BRS scheme vide G.O.Ms.No.152 dated 02.11.2015, the petitioner made an application dated 28.12.2015 for regularization of the unauthorized constructions. It is said that when the Municipal authorities tried to demolish his building, he filed O.S.No.1658 of 2015, which was decreed on 17.04.2017, granting perpetual injunction restraining the Municipal authorities from interfering or demolishing the suit schedule property till the disposal of BRS application. It is said that because of some disputes, his neighbour made a complaint to the Municipal authorities bringing to their notice the illegal constructions made in second, third and fourth floors. Their inaction, lead to filing of Writ Petition No.18344 of 2017 by the unofficial respondent before this Court, wherein this Court vide order dated 08.06.2017, directed the authorities to consider the representation of the unofficial respondent herein and pass orders in accordance with law within a period of four weeks. Challenging

the same, W.A.No.861 of 2017 came to be filed by the petitioner, but the same was confirmed. Pursuant thereto, the petitioner herein is said to have submitted her explanation. The inaction of the authorities in dealing with the explanation, lead to filing of W.P.No.26556 of 2018. Since the BRS application submitted by the petitioner was pending consideration, the authorities stated before this Court that no action could be taken till the disposal of the said application. Recording the same, the Writ Petition was closed on 16.08.2018. At that stage, the third respondent issued proceedings dated 18.08.2018, directing the petitioner to remove the balconies projected on to the road margin, for consideration of the BRS application. Challenging the same, the petitioner filed the W.P.No.30770 of 2018 before this Court. By an order dated 29.08.2018, this Court allowed the Writ Petition and set-aside the impugned proceedings dated 18.08.2018 on the ground that the impugned proceedings for removal of balconies came to be passed without giving any notice to the stakeholders. Thereafter, the impugned notice dated 22.09.2018 came to be issued under Section 636 of the Hyderabad Municipal Corporation Act (for short "the Act") informing the rejection of the BRS application as the petitioner failed to remove the balconies. When the 3rd respondent passed, the impugned order dated 01.11.2018, rejecting

her explanations on the ground of failure to remove the balconies, filed W.P.No.40513 of 2018 came to be filed before this Court and when the Municipal authorities issued the impugned notice dated 22.09.2018, another Writ Petition No.41989 of 2018 came to be filed.

5) The main ground urged by the learned counsel for the petitioner is that "competent authority" to pass the impugned order is the "Commissioner" and that the Assistant City Planner has no jurisdiction to pass the impugned order. It is further urged that when the earlier order of the Assistant City Planner was set-aside, the question of passing the order under Section 636 of the Act for the self-same reason is illegal, improper and incorrect. It is stated that the third respondent, who is the Assistant City Planner, has no jurisdiction to deal with the BRS application submitted by the petitioner and since he has no jurisdiction to deal the same, the order under challenge warrants interference.

6) Counters came to be filed by the respondents 1 to 3 and 5 but, however no reply was filed, disputing the averments in the counters.

7) Insofar as the first argument of the learned counsel for the petitioner that the Assistant City Planner has no jurisdiction to

deal with the BRS application, it is to be noted that vide G.O.Ms.No.152, rules came to be framed as Telangana Regularization of Unauthorizedly Constructed Buildings and Buildings Constructed in Deviation of the Sanctioned Plan Rules 2015. In the said rules, the word "competent authority" is defined under Rule 2(2). As per the said rule, the "competent authority" means "Municipal Commissioner" in case of areas falling in the Municipal Corporation and Municipal limits. The third respondent, who is the City Planner is said to have circulated the file relating to the subject property to the Commissioner, who instructed respondents 2 and 3 to dispose of the BRS application at the first instance and also the representation of the petitioner by conducting hearing and take further action as per rules. Accordingly, the respondent No.3, who passed the impugned order informed the petitioner vide his office letter dated 18.08.2018 to remove the balconies, which are projected on to the road margin as a condition for considering the BRS application. Since the petitioner did not comply with the same, the third respondent rejected the BRS application vide office letter dated 22.09.2018 and also rejected the written explanation submitted by the petitioner after duly examining vide office letter dated 01.11.2018. Therefore, the impugned order, which came to be passed rejecting

the BRS application was after considering the explanation submitted by the petitioner. Further, it is also to be noted that in exercise of powers conferred under Section 119 of the Act, powers have been delegated for disposal of applications received under G.O.Ms.Nos.152 and 151 dated 02.11.2015, the details are as under:-

Office	Powers delegated
Circle office	To examine & dispose all individual residential buildings/apartments/group housing upto a height of 18.00 mts., irrespective of site area with the approval of Dy. Commissioner.
Zonal Office	a. To examine & dispose all Non-Multi-storied buildings (other than residential buildings) viz., Commercial complexes, Institutional Buildings, Function halls, Hospitals and public & semi-public buildings etc., with the approval of Zonal Commissioner. b. All layout/plot regulation applications pertaining to their circle offices are disposed by Zonal City Planners.
Head Office	To examine and dispose all Multi-storied building applications irrespective of use.

8) From the contents of counters and the chart referred to above, it is clear that powers have been delegated to the authorities to deal with the applications, which will be confirmed by the Commissioner. As per paragraph "4(F)" of the counter, the third respondent has circulated the file to the Commissioner,

wherein the Commissioner instructed the 2nd and 3rd respondents to dispose of the BRS application at the first instance and also the representation of the petitioner as per rules. Accordingly, the respondent No.3 informed the petitioner vide office letter dated 18.08.2018, to remove the projected balconies, failing which the BRS application will not be considered. But the petitioner failed to remove the balconies which are projected on to the road margin. In pursuance to the instructions from respondent No.1, respondent No.3 rejected the BRS application vide office letter dated 22.09.2018.

9) It is also to be noted here that the contents of the counter show that the BPS plan submitted by the petitioner is not tallying with the site situation. Therefore, only such of those structures, which are not reflected in Rule 9 of the Rules 2015 can be regularized. Rule 9 of Telangana Regularization of Unauthorizedly Constructed Buildings and Buildings constructed in Deviation of the Sanctioned Plan Rules 2015, reads as under:-

Regularization not to apply to certain sites: Regularization of unauthorized constructions shall not be considered in the following cases and in cases where public interest and public safety are likely to be adversely affected, viz. (a) Encroachment on Government land or property belonging to Public undertakings, Housing Board, Telangana State Industrial Infrastructure Corporation, Urban Development Authorities, Local bodies, Endowments, Wakf Board, etc.; (b) Land for which the applicant has no title; (c) Surplus land

declared under Urban land Ceiling /Agriculture Land Ceiling/ lands resumed under Assigned Lands (POT) Act; (d) Buildings affected under alignment of any road or proposed road under Master Plan/Zonal Development Plan/Road Development Plan or any other public roads/MRTS; (e) Tank bed and Sikham lands; (f) Areas prohibited for construction under GOMs No. 111 MA&UD Dept., dated 8-3-1996 (protection of Catchment area of Osmansagar and Himayatsagar lakes); (g) Layout/Master Plan open spaces/Areas earmarked for Recreation Use /open space use in Master Plan/Zonal development Plan; (h) Buildings that are not in conformity with land use and zoning regulations approved in Master Plan/Zonal development Plan; 4 (i) Sites under legal litigation/ disputes regarding ownership of the site / building; (j) Area earmarked for parking as per sanctioned plan; (k) Unauthorized constructions without any building sanction in unapproved /unauthorized layouts, for which prior approval of site/plot under regularization of unapproved and illegal layout rules shall be obtained; However in case of Rule 9(k), applications for Regularization will be accepted if the applicant encloses the Acknowledgment of the Application made for regularization of the unauthorized site/plot under the relevant rules to the competent authority.

10) It is also to be noted that earlier the third respondent passed an impugned order dated 18.08.2018, after referring to notices issued under Sections 452 and 461 of the Hyderabad Municipal Corporation Act and the notices under Sections 452 of H.M.C. Act dated 04.07.2015 stating that the BRS application submitted by the petitioner is rejected since the BPS plan is not tallying with the site situation and the balconies are projected on to the road margin. Further, the petitioner was directed to remove the balconies within 7 days, failing which the same will be removed by the GHMC. Challenging the said order, a W.P.No.30770 of 2018 was filed. The said order was set-aside by the Court on the ground

that the impugned order therein came to be passed without giving an opportunity of hearing to the petitioner and remanded the matter back to the Municipal Corporation for fresh consideration. Pursuant to the said remand, notice under Sections 436 and 636 of the HMC Act came to be issued directing the petitioner to remove balconies on the road margin within 24 hours, failing which the authorities will remove the same. The reason given for the same appears to be that the BRS application of the petitioner is rejected since the petitioner failed to remove the projected balconies. But, it is to be noted here that earlier order dated 18.08.2018, which was passed by the authorities, rejecting the BRS application of the petitioner and the consequent act of removing the balconies was set-aside by the High Court and remanded the matter back to the Municipal Corporation and accordingly, directed the authorities for fresh consideration of the issue.

11) Since the earlier order dated 18.08.2018 was not under Section 636 of the Act, it would be appropriate for the authorities to first deal with the BRS application and pass orders in accordance with law after hearing all the concerned as held earlier by this Court and then proceed in accordance with Section 636 of the HMC Act. If the authorities demolished the building pursuant to the impugned notice under Section 636, nothing survives for

adjudication in the BRS application, which was directed to be considered after hearing the petitioner.

12) With the above directions, both the writ petitions are disposed of. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 20.12.2018
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