

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.42725 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“....to issue any Writ, order or direction more especially one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in failing to take appropriate action against the 3rd respondent's illegal constructions made contrary to the Sanctioned Building Plan No.G1/61/325/2015-16, Dt.13-04-2016 at H.No.1-4-293/1, situated at I.B. Road, Korutla Town and Mandal, Jagtial District without considering the objections of the Petitioner, Dt.03-10-2017, 29-07-2017 and 24-07-2017 as illegal, arbitrary and contrary to the provisions of T.S. Municipalities Act and consequently direct the Respondents 1 & 2 to forthwith initiate further steps for removal of the illegal constructions made by the 3rd respondent by duly considering the objections of the Petitioner, Dt.03-10-2017 and to pass such other order or orders as this Hon'ble Court may deem fit just and proper in the circumstances of the case.”

I have heard the submissions of the learned counsel appearing for the petitioner, of the learned standing counsel representing the 2nd respondent municipality and of the learned counsel appearing for the 3rd respondent. I have perused the material record.

The case of the writ petitioner is this: 'The 3rd respondent, having obtained building permission for construction of ground plus two floors, made constructions in deviation of the building permit. While making such unauthorised constructions, the 3rd respondent encroached into the road on the Northern side and laid six pillars on the road and constructed four floors. On an earlier complaint made by the petitioner, the 2nd respondent municipality initiated action and passed provisional order-cum-notice, dated 25.07.2017, intimating the 3rd respondent that the constructions are made in deviation of the building plan and that the

3rd respondent also constructed a pent house. As the 3rd respondent did not respond to the said notice-cum-provisional order, the 2nd respondent passed final order, on 08.08.2017 for removal of the illegal constructions. Questioning the said final order, the 3rd respondent approached this Court by filing W.P.No.27433 of 2017. The said writ petition was disposed of, on 17.08.2017, setting aside the conformation order, dated 08.08.2017, and left it open to the 2nd respondent to consider the explanation of the 3rd respondent and pass appropriate orders. Thereafter no further action has been taken though the 3rd respondent proceeded with making unauthorised constructions. Therefore, the petitioner submitted detailed objections, dated 03.10.2017. Despite such objections being raised, no action has been taken by the 2nd respondent municipality against the constructions that were made and being made by the 3rd respondent. Therefore, the writ petition is filed.'

Learned counsel for the 3rd respondent would submit that the petitioner is distantly related to the petitioner and that there are several disputes between them and that the 3rd respondent is a poor lady and that she is not even in a position to complete the internal constructions in the second floor and that no third floor and pent house are constructed and that when a notice was issued an explanation was offered by the 3rd respondent in response to the notice of the 2nd respondent municipality and that only a construction covering the staircase was constructed in the 3rd floor and above that a water tank was established and therefore, neither third nor fourth floors are constructed and that no encroachments have been made into the public road and that the municipal authorities have also found that the constructions are made well within the property of the 3rd respondent

and that the writ petition is filed with malice and hence the writ petition is liable to be dismissed as the municipality has already initiated appropriate action against the petitioner and the matter is under consideration of the municipality.

Learned standing counsel would submit that the permission is also obtained for commercial purpose and that no encroachment was made into the public road and that when constructions are made in deviation of the approved building permit a provisional order was passed on 25.07.2017 following the procedure.

Learned counsel for the petitioner, in reply, would submit that even the pleadings of the 3rd respondent in the afore-stated writ petition filed by her would show that the permission is obtained only for residential purpose and not for commercial purpose and that the 3rd respondent pleaded in the counter affidavit that shutters are erected for some rooms only for storage purpose and not for using the building for commercial purpose and, therefore, the municipality is not taking action against the petitioner.

In the considered view of this Court, in the facts and circumstances of the case, the writ petition can be disposed of with a direction to the 2nd respondent municipality to act on the objections of the petitioner, dated 03.10.2017, and take an appropriate decision in the matter in accordance with the procedure established by law.

Accordingly, the Writ Petition is disposed of directing the 2nd respondent municipality to consider and dispose of the objections, dated 03.10.2017, of the petitioner in strict accordance with the procedure established by law, within four weeks from the date of receipt of a copy of this order, however, after affording an opportunity of being heard to

the petitioner as well as the 3rd respondent and communicate to them the decision taken thereon within a week thereafter.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

03.01.2018
Vjl

