

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No.682 of 2019

ORDER

This writ petition is filed seeking to declare the notice dated 09.01.2019 issued under Section 636 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), by the 3rd respondent, as illegal and arbitrary and consequently direct the respondents not to take any coercive steps for demolition of the structure made by petitioner in Plot No.B-145, Road No.10, Green Park Colony, Lingojiguda, Hyderabad, without considering his reply to the show cause notice dated 03.01.2019 issued under Section 452(2) of the Act.

2. Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development for respondent No.1 and learned Standing Counsel for respondents 2 and 3.

3. The brief facts are that initially, the 3rd respondent issued notice to the petitioner on 20.12.2018 alleging that the constructions made by him are within the FTL area of the large Tank, Saroornagar and in violation of G.O.Ms.No.86 M.A., Dated 03.03.2006, G.O.Ms.No.623 M.A., dated 01.12.2006 and G.O.Ms.No.168 M.A., dated 07.04.2012. Upon receipt of the said notice, the petitioner has submitted explanation on 24.12.2018 denying the allegations and specifically stating that his plot is out side the FTL and buffer zone area of Saroornagar and that the other residential houses were

construed on east, west and north side of his plot after taking construction permission from the GHMC and he requested to verify and permit him to proceed with the constructions as his site does not come under the FTL and buffer zone area. However, the respondents have again issued notice under Section 452(2) of the Act on 03.01.2019 stating that the petitioner was proceeding with construction unauthorizedly and directed him to submit the ownership documents and sanctioned copy for verification. He submitted another representation dated 05.01.2019 specifically stating that his plot is situated at 200 feet away on the western side of the main road in Green Park Colony and is more than one kilometer away from the tank. Petitioner asserts that the respondents have neither verified the records nor considered his explanation. However, they issued the impugned notice under Section 636 of the Act stating that the petitioner has made unauthorized construction of stilt + 1 upper floor + pent house and directed to remove the said constructions.

4. In the initial notice dated 20.12.2018, the respondents have stated that the petitioner made constructions in violation of FTL and buffer zone area of Saroornagar tank and there was no allegation that he made such constructions without obtaining permission. In the light of the said notice, the petitioner also submitted explanation. Since there being no specific allegation at the stage of initial notice issued under Section 452(1) of the Act that the petitioner made constructions without obtaining permission and there being no reference to the contents of the explanation, the petitioner has

proceeded with the constructions. Whereas the impugned notice issued under Section 636 of the Act was on the other ground than the ground mentioned in the initial notice.

5. In the above circumstances, the impugned notice dated 09.01.2019 is set aside, giving liberty to the respondents to issue specific notice pointing out that the petitioner made the alleged constructions either obtaining permission or not obtaining permission from the concerned respondents and shall pass a detailed order in accordance with law after considering the explanation already submitted by him and further explanation that may be filed by him. It is also made clear that the petitioner shall not make any further construction without obtaining permission from the competent authority.

6. With the above direction, the Writ Petition is allowed. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

22nd January, 2019

sj