

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+WRIT PETITION No.4183 OF 2019.

%28-02-2019

Syed Ameer Ali

...Petitioner

Vs.

\$ The Commissioner,
Greater Hyderabad Municipal Corporation (GHMC),
Office at Tank Bund, Hyderabad & 3 others

....Respondents

!Counsel for the Petitioner: Mr.Ali Farooq

^Counsel for the Respondents : Mr.Pasham Krishna Reddy, learned
Standing Counsel for respondent
Nos.1 to 3.

<Gist :

>Head Note:

? Cases referred:



HIGH COURT FOR THE STATE OF TELANGANA, AT HYDERABAD**MAIN CASE NO: WRIT PETITION No.4183 OF 2019****Between:**

Syed Ameer Ali

.. Petitioner**And**

The Commissioner,
Greater Hyderabad Municipal Corporation (GHMC),
Office at Tank Bund, Hyderabad & 3 others

.. Respondents**DATE OF JUDGMENT PRONOUNCED: 28.02.2019****SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

1. Whether Reporters of Local news papers Yes/No
may be allowed to see the Judgments?
2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.4183 of 2019****ORDER:**

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

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue any appropriate Writ, Order or Direction preferably a Writ of Mandamus, declaring the inaction of the Official Respondent No.3 in not taking any action on the representation of the Petition Dt.17.01.2019, with regard to the illegal construction made by the 4th Respondent on 3rd floor and 4th floor in premises bearing MCH No. 23-1-954/6, Sana Towers, Moghalpura, Hyderabad, and consequently directing the respondents 1 to 3 to stop/demolish the illegal and unauthorized construction on 3rd floor and 4th floor, in premises bearing MCH No. 23-1-954/6 on 3rd Floor, Sana Towers, Moghalpura, Hyderabad, pending disposal of the above writ petition 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.”

2. Heard learned counsel for the petitioner, Sri Pasham Krishna Reddy, learned Standing Counsel appearing for respondents 1 to 3. Perused the material available on record.

3. The petitioner espoused his grievance on the 4th respondent and asserts that he is making constructions without obtaining permission from the municipal authorities. It is stated that as against the constructions that are being made by the 4th respondent, the petitioner had made a complaint on 17.01.2019. According to the petitioner, the building of the 4th respondent is 20 year-old and the same is in dilapidated condition and likely to collapse any time on account of improper maintenance thereof. In those circumstances, the writ petitioner seeks a *writ of mandamus* to the 3rd respondent to act on his complaint, dated 17.01.2019.

4. Having regard to the facts of the case, as asserted, one thing that emerges from the writ affidavit is that the petitioner had not made any effort to approach the authorities by invoking the provisions of the Right to Information Act and seeking information as to whether the 4th respondent has obtained any permission before making construction or not. In the absence of the said assertion, this Court is not inclined to entertain the writ petition, as it is not for this Court to act on every representation without there being any corresponding obligation on the part of the petitioner to place the compelling material for this Court to act. As a large number of cases day in and day out are being filed by simply writing a letter to the Municipal Corporation and thereafter, complaining within two (02) weeks that such letters are not being acted upon, this Court desires that any individual before approaching the Court necessarily have to give due diligence and ascertain the factual aspects, particularly in relation to the complaints of inaction on the part of the respondent authorities. One of the objectives that is sought to be achieved through the Right to Information Act is to ensure that a citizen is made available with the information as a matter of right. In the present case, the petitioner having not made such effort, the writ petition can be closed by giving him liberty to approach the Municipal authorities and obtain the information as needed and thereafter, make a complaint to the respondent authorities bringing to their notice the said facts to take appropriate action. It is only thereafter, they can approach this Court. Further, with respect to the complaint of the petitioner that the building of the 4th respondent is in dilapidated condition, there is a separate Engineering Department functioning under the JNTU to ascertain and give structural stability report. If the petitioner is of the opinion that the building of the 4th

respondent does not have the structural stability and the same is likely to endanger the lives of the neighbours, like the petitioner, he is required to make an Application to the municipal authorities to cause inspection of the dilapidated structure and then take appropriate action in terms of Section 456 of Greater Hyderabad Municipal Corporation Act, 1955, which reads as follows:

“456. Removal of structures, trees etc., which are in ruins or likely to fall:-

(1) It if shall at any time appear to the Commissioner that any structure (including under this expression any building, wall, parapet, payment, floor, steps, railings, door or window frames or shutters or roof, or other structure and anything affixed to or projection from or resting on, any building, wall, parapet or other structure) is in ruinous condition or likely to fall, or is in any way dangerous to any person occupying, resorting to or passing by, such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to do one or more of the following things, namely:-

- (i) to pull down,
- (ii) to secure,
- (iii) to remove, or
- (iv) to repair such structure or thing, and to prevent all cause of danger therefrom.

(2) The Commissioner may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith or before proceedings to pull down, secure, remove or repair the structure or things, to set up a proper and sufficient hoard or fence for the protection of passers-by and other persons, with a convenient platform and hand-rail, if there be room enough for the same the Commissioner shall think the same desirable, to serve as footway for passengers outside of such hoard or fence.

(3) If it appears to the Commissioner that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by the Commissioner under sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) Where the Commissioner is of opinion whether on receipt of an application or otherwise that the only or the most convenient means by which the owner or occupier of structure such as is referred to in sub-section (1) can pull down, secure, remove or repair

such structure, is by entering any of the adjoining premises belonging to some other person the Commissioner after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing, authorize the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of the Commissioner shall be a sufficient authority to the person in whose favour it is made, or to any agent or person employed by him for this purpose, after giving to the owner of the premises reasonable written notice of his intention so to do, to enter upon the said premises with assistants and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing, any work under this section as little damage as possible shall be done to the adjoining owner's property, and the owner or occupier of premises for the benefit of which the work is down, shall –

- (i) cause the work to be executed with the least practicable delay:
- (ii) pay compensation to any person who sustains damage by the execution of the said work.”

5. As causing of inspection and getting the structural stability report from the competent authority involves certain expenditure, the petitioner also shall undertake and pay the said expenditure in advance so as to ensure the municipal authorities to take appropriate action, in accordance with law.

6. Subject to the above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

Date: 28th February, 2019

Note: L.R. copy to be marked.

(B/o.)
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HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.4183 of 2019**Date: 28th February, 2019

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