

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

W.P.No.4571 OF 2019

ORDER:

Heard the learned counsel for the petitioner and the learned Standing Counsel for Respondent Corporation.

2. A notice under Section 452(2) of Hyderabad Municipal Corporation Act, 1955 was issued on 26.2.2019, alleging that the owner/occupier of premises bearing No.8-2-293/82/F/A/2, Road No.82, Film Nagar, Hyderabad made two rooms illegally and unauthorisedly without obtaining prior permission from GHMC, thereby violating the provisions contained in Sections 428 and 433 of GHMC Act, 1955, building bye-laws and Zoning Regulations, 1981 and called upon to submit its explanation. It is stated that the petitioner is the leaseholder of subject premises who is running a Thick Shake Factory outlet in the said premises submitted explanation on 1.3.2019. On 1.3.2019 itself, GHMC issued notice under Section 636 of HMC Act, directing the petitioner to pull down/remove/demolish the unauthorized construction within 24 hours. Challenging the same, this writ petition is filed.

3. Primarily, it is contended that the explanation offered by the petitioner was not considered before resorting to issue notice under Section 636 of Act and the same is ex-facie illegal. A reading of the notice dated 1.3.2019 issued under Section 636 of the Act would makes it clear that the explanation offered by the petitioner on 1.3.2019 was not considered. It is to be noted that the petitioner submitted his explanation to Assistant City Planner, Circle-18 on 1.3.2019 and notice under Section 636 of the Act was also issued by

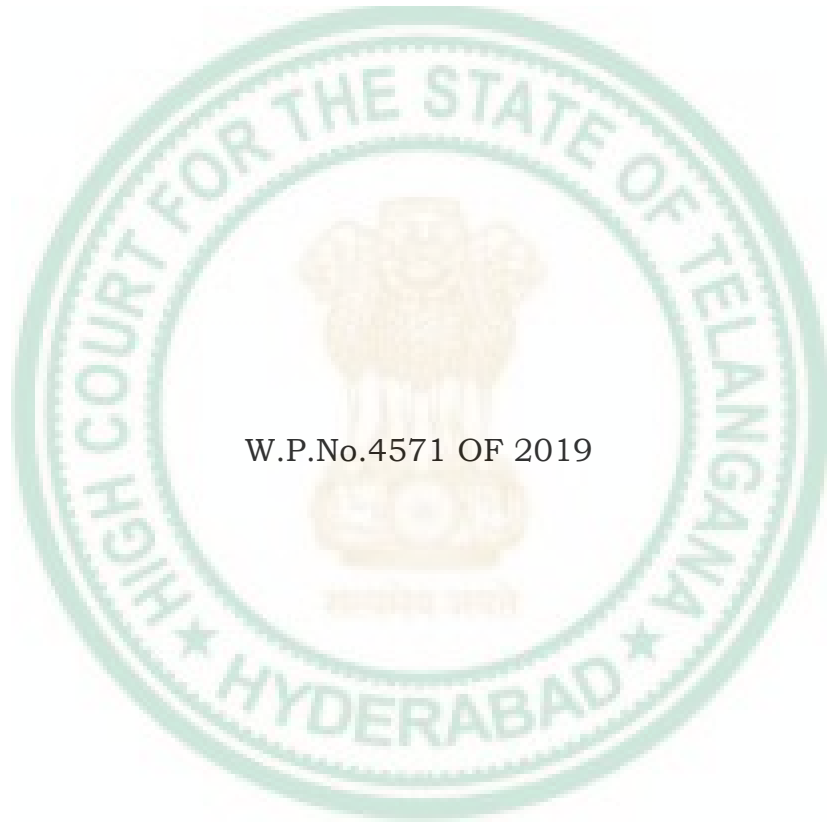
the same Circle-18 on same day itself. Since the explanation was already available, the Respondent Corporation could not have issued notice under Section 636 of the Act without considering the explanation offered by the petitioner and on this ground alone, the impugned notice is liable to be set aside. The learned Standing Counsel appearing for the Respondent Corporation also does not dispute about the fact that the explanation of the petitioner was not considered before issuing notice under Section 636 of the Act.

4. Accordingly, the writ petition is allowed, setting aside the notice dated 1.3.2019 issued under Section 636 of HMC Act, 1955 and the respondents are directed to consider the explanation offered by the petitioner on 1.3.2019 and to take a decision by assigning due reasons and communicate the same to the petitioner within a period of two weeks from the date of receipt of a copy of this order. The miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 11.6.2019
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P. NAVEEN RAO, J

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