

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.6283 of 2019

ORDER:

This writ petition is filed with the following prayer:

“...to issue a Writ or Order/s more particularly one in the nature of Writ of Mandamus declaring the Notice bearing no.686/ACP/C18/GHMC/2019, dated 14-02-2019 and the letter bearing no.183/ACP/C18/GHMC/2019, dated 20-03-2019 issued by the Respondent Nos.1 and 2 as illegal, arbitrary and unconstitutional and consequently set aside the Notice bearing no.686/ACP/C18/GHMC/2019, dated 14-02-2019 and the letter bearing no.183/ACP/C18/GHMC/2019, dated 20-03-2019 and be and be pleased to pass such and other order/s as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. Sri B.Vijaysen Reddy, learned counsel for the petitioner, submits that at the instance of two flat owners, in respect of the issue in the writ petition, filed a suit in O.S.No.254 of 2019 before the IV Additional Senior Civil Judge, City Civil Court, Hyderabad and the same is pending. As such, respondent No.2 should not have issued the impugned notice and proceedings, as parties are litigating the same before the civil Court. He further submits that the predecessor in title of the petitioner, by name Smt.Ganesham Shalini Reddy, has not made any alterations to the flat, but her predecessor, by name Smt.P.Sardamma, who was the original owner and promoter of the building along with pent house, obtained the regularization proceedings of the building.

3. On the other hand, Sri D.Prakash Reddy, learned senior counsel, appearing for respondent Nos.3 and 4 submits that the pent-house/flat purchased by the petitioner was regularized by the GHMC authorities. He further submits that what was purchased by the petitioner is 2165 sq. feet, which was regularized, but not the open space nor any structures beyond 2165 sq. feet. The petitioner encroached the open space by closing the same by door and window. As such, the flat owners are deprived of access to open area in the terrace of the building. Therefore, the respondent authorities rightly issued the show-cause notice and passed the impugned order, but they have not taken any action thereafter.

4. In this case, it is to be seen that the petitioner filed an explanation on 28.02.2019 to the show-cause notice, dated 14.02.2019, and thereafter, the respondent authorities rejected the said explanation offered by the petitioner and issued the impugned proceedings, dated 20.03.2019, directing the petitioner to remove the illegal structures. Though it is stated that the civil proceedings are pending before the Court, the respondents had issued the show cause notice. After submission of explanation to the notice, the respondent authorities, by referring several documents, passed the impugned order, dated 20.03.2019, rejecting the explanation submitted by the petitioner with an observation that the Terrace rights are free for all and no body has specific rights over the Terrace. Since the civil Court is seized of the matter, this Court cannot go into the disputed

questions of fact raised in the writ petition and I do not find any merit to entertain the writ petition.

5. Accordingly, the writ petition is dismissed. However, it is open for the petitioner to avail alternate remedies, if any, against the impugned action of the respondents.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

18th November 2019

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A. RAJASHEKER REDDY, J

