

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No.7235 of 2019

ORDER

Heard learned counsel for the petitioners and learned Standing Counsel for the 1st respondent.

2. This writ petition is filed seeking to declare the action of the 1st respondent in not taking any action for demolition of the illegal construction of second floor roof made by the 2nd respondent in the building bearing H.No.4-3-512, 515, 516 and 517, situated at Gulbagh Hanuman Tekdi, Hyderabad, as illegal and arbitrary.

3. The petitioners assert that as per the building permission dated 27.09.2017, the 2nd respondent was permitted to construct ground + 1st floor, whereas, as on date, he has constructed the 2nd floor. Bringing the said aspect to the notice, the petitioners made a complaint on 22.03.2019 to the 1st respondent, however, no action has been taken against the 2nd respondent.

4. Learned Standing Counsel for the 1st respondent opposed the writ petition and contends that even as per the material placed before this Court, the petitioners have already filed O.S.No.1062 of 2018 on the file of the XX Junior Civil Judge, Hyderabad, against the 2nd respondent, and therefore, the writ petition is not maintainable. However, he submits that the complaint of the petitioners would be considered and appropriate action would be initiated.

5. Having regard to the respective submissions and the material on record, it is to be noted that the schedule of property mentioned in O.S.No.1062 of 2018 is extracted as under:

“All the eastern side of plaintiffs’ house property bearing H.No.4-3-518, situated at Gulbagh, Hanuman Tekdi, Hyderabad, Telangana State, which is admeasuring Approx 40 feet length and bounded by :

North: Part of H.No. House of Sayanni (Neighbour property).

With respect to the above schedule of property, the prayer of the petitioners in the plaint is as under:

- “(a) to pass a decree of perpetual injunction restraining the defendant, his followers, relatives, employees or any persons claiming through defendant from in any way make construction in or over plaintiffs’ house;
- (b) pass a decree of mandatory injunction directing the defendant to reconstruct the eastern wall of plaintiffs’ house which the defendant demolished and to close the drainage forthwith;
- (c) pass a decree of damages directing the defendant to pay a sum of Rs.30,000/- to plaintiffs for the damage caused by demolishing the wall.

The schedule of property and the prayer in the suit would make it clear that the petitioners do not raise any dispute with respect to the alleged construction of additional floor by the 2nd respondent in violation of the sanctioned plan.

6. In the complaint made by the petitioners on 22.03.2019, they had clearly stated their grievance with respect to the construction of the additional floor without maintaining the setbacks by the 2nd respondent. In other words, the relief in the suit does not cover the relief as prayed in the present writ petition.

7. In those circumstances, it is the duty cast upon the 1st respondent to ensure that the constructions made by the permit holders are strictly in accordance with the sanctioned plan. Therefore, it would be appropriate to direct the 1st respondent to take action in terms of the order of the Division Bench of this Court in W.P.No.20000 of 2016 dated 27.10.2006, wherein this Court observed as under:

- “1) The Commissioners and/or other concerned authorities of the Municipal Corporations and Municipalities in the State of Andhra Pradesh should within a period of 15 days from the date of receipt of representation made or notice sent by any person with the complaint regarding illegal/unauthorized construction, invariably give a written response to the person sending representation or notice.
- 2) The concerned authorities of the Municipal Corporations or Municipalities shall take necessary measures/steps to ensure that no one is allowed to raise construction without obtaining the building plan sanctioned from the competent authority and no construction is made in violation of the sanctioned plan or master/zonal plan/lay out”.

8. With the above direction, the Writ Petition is disposed of. No order as to costs.

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

CHALLA KODANDA RAM, J

4th April, 2019

sj