

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.20270 of 2019

ORDER:

This Writ Petition is filed seeking to issue a writ of *Mandamus* declaring the inaction of respondent Nos.2 and 3 on the representation of the petitioner, dated 24.7.2019, for removal of the unauthorised construction made by respondent Nos.4 to 8 in Sy.Nos.19, 20, 30, 31, 32, 33 and 34 admeasuring Acs.7.00 situated at Amberpet, Kalan Village, Amberpet Mandal, Hyderabad, as illegal and arbitrary.

The petitioner asserts that she filed O.S.No.439 of 2013 on the file of learned II Additional Chief Judge, City Civil Court, Hyderabad, seeking partition of the suit schedule property, which includes subject land and therein she also filed I.A.No.2143 of 2013 seeking ad-interim injunction restraining the respondents therein from changing the nature of the said property. The said I.A. is pending and no orders have been passed by the Court below. The petitioner further asserts that recently, she noticed that a room has been constructed illegally by respondents 4 to 8 in the subject property notwithstanding the fact that the said suit is pending and therefore, she got issued a legal notice to them through an advocate.

Learned counsel for the petitioner submits that the petitioner is the owner of the subject property and without her consent, respondent Nos.4 to 8 have illegally constructed a room in the subject land and as such, a duty is cast on the official respondents to take action in accordance with law with regard to the said illegal construction.

Sri L.Venkateshwar Rao, learned Standing Counsel appearing for the respondent Corporation, opposed the Writ Petition stating that as the petitioner has already moved the civil Court by filing the suit and an I.A. seeking ad-interim injunction and the same is pending consideration, the Writ Petition itself is not maintainable.

Having regard to the respective submissions of the learned counsel, the fundamental issue which falls for consideration of this Court is 'whether for every small infraction which is alleged, and even assuming that there is such an infraction, the respondent Corporation is required to take action as there is a duty cast on it to act on the complaints and ensure that the constructions are made in accordance with law'.

The cases, where the constructions are made in violation of the Greater Hyderabad Municipal Corporation Act, 1955, and the Rules made thereunder, would have to be dealt with following a lengthy procedure of issuance of notice, calling for an explanation and thereafter, taking action. Even in such cases, a Full Bench of this Court held that not every infraction is required to be demolished as the Government is coming up with one scheme or other regularising the illegal constructions.

Even as per the petitioner what all has been done by respondent Nos.4 to 8 is construction of a small room in the subject property. Whether the said room has been constructed by the respondents or by some others is an issue which can be decided in the pending civil suit as there is an element of enquiry with respect to the factual matrix of the case.

Hypothetically, if every infraction that is being complained of is required to be attended to by the Municipal authorities merely on account of the fact that supervisory jurisdiction is vested with them, wherever adequate civil remedy is available to an individual, it may not be possible with the limited resources and staff available with them. The Municipal authorities are required to ensure basic civil amenities are provided, as enumerated in Sections 112 to 116 of the Act and also on various other statutory functions which have been entrusted to them under Sections 117 to 123 of the Act.

In those circumstances, this is not a fit case to be entertained and a writ of *Mandamus* can be issued.

Hence, leaving it open to the petitioner to pursue the aforesaid suit which is already filed by her, the Writ Petition is dismissed. However, it is made clear that dismissal of this Writ Petition shall not be construed as this Court either approving the construction alleged to have been made by the unofficial respondents or their right to make such construction in the subject property. It is needless to say, the civil Court is required to consider the aforesaid suit on its own merits without being influenced by the observations made in the present Writ Petition.

Pending Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

JUSTICE CHALLA KODANDA RAM

19th September, 2019
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