

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21120 of 2019

ORDER:

It is the case of the petitioners that they are purchasers of Flat Nos.A/601, A/604, B/601, B/602, B/603, C/601, C/602, C/603 situated in Plot Nos.98 to 102 of Prashanthi Homes, H.No.1-12-130, Srinagar Colony, Vinayak Nagar, Nizamabad, through registered sale deeds on different dates. It is their further case that the builder M/s K.S. Builders has made constructions pursuant to the construction permission granted in 2009, and completed the construction by 2012. It is their assertion that the Builder having made extra construction, over and above the sanctioned plan, submitted an Application dated 25.01.2016 to the respondent authorities seeking regularization of additional construction under the Notification issued under G.O.Ms.No.152 dated 02.11.2015. As on date, no orders are passed either accepting or rejecting the regularization application. Meanwhile, the petitioners are being threatened with demolition of the property and a Notice dated 21.09.2019 was served on the petitioners, making a reference to the orders of this Court in W.P.No.16923 of 2019. The petitioners are not parties to W.P.No.16923 of 2019, thus, they were not aware of the orders passed in the said writ petition. On enquiry, the petitioners were given to understand that W.P.No.16923 of 2019 was filed against the Corporation and the Builder, alleging that the Builder has made constructions beyond the permission granted, and the Corporation was assailed for not taking any action against the unauthorized construction. The petitioners apprehend coercive action by the respondent authorities.

Heard learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development, and the learned Standing Counsel for 2nd respondent-Municipality.

Learned counsel for the petitioners submit that the petitioners are bona fide purchasers of the subject properties, and that they are not aware of the orders passed in W.P.No.16923 of 2019, and further that the Builder has already made regularization application for the additional construction made over and above the sanctioned permission, and therefore, till such time the regularization application is decided, the respondent authorities may be directed not to take coercive action.

Learned Standing Counsel opposes the writ petition and submits that notice dated 21.09.2019 was issued to the petitioners pursuant to the orders of this Court in W.P.No.16923 of 2019, and it is always open for the petitioners to submit their explanation which shall be considered in accordance with law.

Having regard to the respective submissions, inasmuch as the Builder is duty bound to answer the allegations made in the notice dated 21.09.2019, and inasmuch as the petitioners have acquired some right in the subject properties, it shall also be in the interest of justice to give an opportunity to the petitioners to submit their explanation. As it is the assertion of petitioners that regularization application made by the Builder in terms of G.O.Ms.No.152, dated 02.11.2015 is still pending before the appropriate authority, the petitioners shall submit their explanation to the notice dated 21.09.2019, and the respondent authorities are directed to consider the explanation, in accordance with law, keeping in view the pendency of regularization application, before taking any coercive action.

With the above direction, the writ petition is disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

25th September, 2019
KSM

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