

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.25389 of 2013

ORDER:

The petitioner challenges the Notice dated 01.08.2013 issued by the respondent No.1-Commissioner, Warangal Municipal Corporation.

It is the case of the petitioner that she made an application for grant of building permission on 28.03.2013, however, no orders were passed either permitting or rejecting her application even after 30 days from the date of application, and therefore, she proceeded with construction activity, in view of deeming provision under Section 437 of GHMC Act. The petitioner asserts that in response to the notice issued under Sections 452(1) and 461(1) of the Act, she submitted detailed explanation on 27.07.2013, but the 1st respondent, without considering same, passed the impugned order under Section 452(2) of the Act.

Sri A. Prabhakar Rao, learned counsel for the petitioner submits that the petitioner had made an application under Building Regularisation Scheme (BRS) notified by the Government in terms of G.O.Ms.No.152, dated 02.11.2015, and the same is pending.

Per contra, Smt. Pingali Lakshmi, learned Standing Counsel submits that the petitioner cannot have benefit of Section 437 of the Act, as the requirement of prior intimation before proceeding with the construction has not been complied with, and therefore, on merits, the petitioner's case does not deserve consideration. However, learned Standing Counsel submits that as the petitioner asserts that her application under Building

Regularization Scheme as per G.O.Ms.No.152 dated 02.11.2015, is pending, necessary orders would be passed in terms of the orders of the Division Bench of this Court in W.P.(PIL) No.63 of 2016, dated 18.10.2016.

Having regard to the respective submissions, in the facts of the present case, the argument of the learned Standing Counsel with respect to the benefit not being available to the petitioner in terms of Section 437 of the Act relating to deeming provision, commands acceptance. There is no material before this Court, nor is it asserted by the petitioner that the terms of Section 437 of the Act, in letter and spirit, have been complied with i.e., putting the Commissioner on notice with respect to the intention to make construction after passage of 30 days time.

The Division Bench of this Court in W.P.(PIL) No.63 of 2016, dated 18.10.2016, in the cases where BRS applications are stated to be pending, observed as under:

“We consider it appropriate, in such circumstances, to modify the earlier order, and direct that the applications for regularization be processed in accordance with the regularization scheme notified in G.O.Ms.No.152 dated 02.11.2015. In case the GHMC or the other Municipal Corporations in the State of Telangana, after considering the applications for regularization, decide to reject the request for regularization, it is open to them to communicate the orders of rejection to the applicants concerned, and thereafter take action for demolition of the illegal structures in accordance with law. In such of those cases where the GHMC, or the other Municipal Corporations, tentatively decide to regularize the illegal structures, such a decision shall merely be recorded in the file, and shall neither be given effect to nor shall it be communicated to the applicants, pending further orders from this Court.”

In terms of the order passed by the Division Bench, the writ petition is disposed of with a direction to the respondent No.1 to pass orders on the BRS application dated 28.03.2013 by considering the explanation submitted by the petitioner on 27.07.2013 for the Show Cause notice dated 29.04.2013. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

28th October, 2019

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