

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C. No. 2830 of 2019

ORDER:

This Contempt Case is filed alleging willful disobedience of the order dt.17.04.2018 passed in W.P. No.9532 of 2018 by this Court.

The said interim order stands as under:

“Within one week from today, respondent No.2 shall issue show-cause Notice under Section 452(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, ‘the Act’) to respondent No.5, who is alleged to have made illegal construction without leaving set-backs and without obtaining prior permission; respondent No.5 shall submit his explanation thereto within three weeks on receipt of such notice; thereafter, respondents 2 and 3 shall pass an order under Section 452(2) of the Act and communicate the same to the petitioner as well as respondent No.5.

Post in the Motion List on 07.06.2018.”

2. It is the contention of the counsel for the petitioner that after the said order is passed, petitioner has requested the 2nd respondent to remove encroachment made by the 5th respondent in the Writ Petition in the petitioner’s property and to demolish the same, but the 2nd respondent failed to comply with the said order though it was served on 27.04.2018. It is alleged that only a show cause notice dt.26.04.2018 was issued by the 2nd respondent, which states as under:

“Whereas it is noticed that the erection/re-erection of the Building/execution of the works as detailed below have been unlawfully commenced/is being unlawfully carried by you at premises P.N:11-1-699/2, Chilkalguda, Secunderabad, Hyderabad. You have laid the slabs for Stilt + 3 upper floors. Therefore you are hereby directed to stop the said construction work.

1. Submit the registered sale-deed copies, sanctioned plan copy and relevant documents.”

3. It is contended that this is not a show cause notice under Section 452(1) of the Act because it does not even contain the word show cause anywhere in it; and that thereafter a notice under Section 452(2) of the Act was issued on 19.05.2018 styling it as a “show cause notice” and asking the 5th respondent in the Writ Petition to show cause as to why the building erected should not be removed/alterd or amended/pulled down. It is contended that because of the inaction of the 2nd respondent, the 5th respondent in the Writ Petition had completed his construction by encroaching into the property of the petitioner and therefore, the 2nd respondent should be punished for contempt of Court.

4. Counter affidavit was filed by the 2nd respondent stating that show cause notice under Section 452(1) and 461(1) of the Act was issued on 26.04.2018 to the 5th respondent in compliance of the order dt.17.04.2018 passed in the Writ Petition.

5. I have already extracted the same in Para 2 supra and from a reading of the same, it is obvious that there is no mention of the word “show-cause” in it. Therefore, it cannot be said that the notice dt.26.04.2018 is a show cause notice under Section 452(1) of the Act at all.

6. After sending the notice dt.26.04.2018, the 2nd respondent waited for three weeks for the 5th respondent in the Writ Petition to submit explanation and when he did not do so, according to the counter, the 2nd respondent passed a notice/order under Section 452(2) of the Act, on 19.05.2018.

7. In para 2 of this notice, no doubt, the 5th respondent in the Writ Petition was called upon to show cause within three days why the building or such portion of the building erected by him should not be removed or pulled down. But such language should have been used in the earlier notice dt.26.04.2018 and not in the notice dt.19.05.2018.

8. In fact, under Section 452(2) of the Act it is incumbent to pass an order pursuant to a show cause notice under Section 452(1) of the Act. Therefore, the 2nd respondent cannot issue a show cause notice under Section 452(2) and try to pass it off as an order under Section 452(2) of the Act.

9. According to the 2nd respondent, explanation was submitted on 28.06.2018 from the 5th respondent in the Writ Petition and not within the three days time as stipulated in the notice dt.19.05.2018.

10. No explanation is forthcoming from the 5th respondent why he waited for more than the three day time period fixed in the notice dt.19.05.2018 till 28.06.2018 to take further action in the matter.

11. Also there is no explanation as to what decision was taken by the 2nd respondent after considering the explanation dt.28.06.2018 given by the 5th respondent to the notice dt.19.05.2018 and why such decision was not taken till today i.e. 08.07.2019, almost one year later.

12. In view of the above, I am of the considered opinion that there is willful disobedience of the order passed by this Court by the 2nd respondent in a brazen manner obviously in collusion with the 5th respondent in the writ petition warranting imposition of punishment under the Contempt of Courts Act, 1971 on the 2nd respondent.

13. In the facts and circumstances of the case, the 2nd respondent is sentenced to fine of Rs.2,000/- (Rupees two thousand only), which shall be paid within two weeks from today. The 1st respondent shall initiate disciplinary action against the 2nd respondent for willful disobedience of the order passed by this Court within four weeks from the date of receipt of a copy of this order and an adverse entry be recorded in the Service Record of the 2nd respondent about the above conduct of the 2nd respondent.

14. Further the 2nd respondent shall, within two weeks, pass an order on the explanation submitted on 28.06.2018 by the 5th respondent in the Writ Petition to the show cause notice dt.19.05.2018 issued by the 2nd respondent after hearing both the petitioner and the 5th respondent in the Writ Petition; and if it is proved that the 5th respondent has illegally constructed the structures in question, he shall proceed to take further action under Section 636 of the Act after passing a reasoned order under Section 452(2) of the Act.

15. The 2nd respondent is warned to be careful in future and in case similar disrespect to the order of this Court is found again a more severe punishment will be imposed on him.

16. In the result, this Contempt Case is allowed partly as above.

17. As a sequel, miscellaneous applications, if any pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 08.07.2019
LSK



