

THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.1318 of 2020

ORDER:

Heard the learned counsel appearing for the petitioners as well as the learned standing counsel appearing for the respondents.

2. The prayer sought in the writ petition is as under:

'For the reasons stated in the accompanying affidavit, the petitioners herein pray that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not passing orders on the representation dated 27.12.2019 made by the petitioners in terms of Section 455 A of the HMC Act is illegal, arbitrary and in violation of Article 14 of the Constitution of India and consequently direct the respondents to pass orders on the representation dated 27.12.2019 made by the petitioners in terms of Section 455 A of the HMC Act, after providing opportunity to the petitioners and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

3. Learned counsel for the petitioners, while arguing the matter, brought to the notice of this Court that pursuant to the notices issued by the Corporation under Sections 452(1), 452(2) and 636 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act'), the petitioners submitted a representation dated 27.12.2019 to the first respondent Corporation. Without passing any orders on the said representation, the authorities are taking steps to demolish the subject property. Therefore, the petitioners seek indulgence of this Court to protect the constructions already made till the orders are passed on the representation submitted by the petitioners.

4. *Per contra*, learned standing counsel appearing for the Corporation placed on record the written instructions dated 23.01.2020 issued by the Assistant City Planner, Circle-21, GHMC.

5. From the perusal of the said written instructions, it is revealed that the petitioners initially constructed stilt plus five upper floors in Plot Nos.319 and 343 in Sy.No.78 situated at Hafeezpet, Serilingampally. Since

the construction was unauthorized, the first respondent Corporation issued notice under Sections 452(1) and 461(1) of the Act, on 16.04.2019 and notice under Section 452(2) of the Act, on 26.04.2019. As there was no response, a final notice was issued under Section 636 of the Act, on 12.09.2019 for the unauthorized construction of stilt plus eight upper floors and pent house in the above said plots. Thereafter, the respondent Corporation has taken up demolition of eighth floor and pent house at ninth floor slabs, on 14.09.2019. However, the petitioners again started construction in the subject plots and constrained the Corporation to demolish the elevation walls and slabs of seventh, eighth and pent house at ninth floor on 18.12.2019 and 19.12.2019. Subsequently, the petitioners filed W.P.No.28558 of 2019 before this Court against the Corporation and two others questioning the action of the respondents 2 and 3 in trying to demolish the subject building without following due process of law. However, the said writ petition was withdrawn on 24.12.2019. Thereafter, the petitioners submitted representation dated 27.12.2019 requesting the Commissioner, GHMC, to regularize the building under Section 455 A of the Act. Since the Corporation is proceeding with the demolition activity, the petitioners filed the present writ petition.

6. Having heard both the learned counsel and from the perusal of the written instructions and the photographs enclosed thereto indicate that the petitioners are going ahead with the construction activity even after demolition of the offending portions. The learned standing counsel appearing for the Corporation also brought to the notice of the Court that even yesterday, i.e., 23.01.2020, the petitioners are proceeding with the construction activity. These written instructions and photographs belie the

submission made by the learned counsel for the petitioners that the petitioners are not proceeding with the construction activity.

7. Since the petitioners have submitted a representation dated 27.12.2019, the same has to be considered as per the provisions of the Act and the Corporation is obligated to pass orders. In these circumstances, this Court is of the opinion that, to meet the ends of justice, the Corporation is directed to pass appropriate orders on the representation dated 27.12.2019 submitted by the petitioners.

8. With the above observations, the writ petition is disposed of directing the first respondent Corporation to consider and pass appropriate orders on the representation dated 27.12.2019 submitted by the petitioners as per law and thereafter, they can take appropriate steps. Till the final orders are passed on the representation submitted by the petitioners to the notice under Section 636 of the Act, no coercive steps shall be taken.

9. However, this order will not preclude the Corporation to follow the procedure as contemplated under the provisions of the Act for removing the offending portions after passing the orders on the representation dated 27.12.2019. It is made clear that the petitioners are directed not to make any further constructions to make the building habitable. If the petitioners proceed further with the construction activity, the Corporation is at liberty to take all steps available under the provisions of the Act, without issuing any further notice.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE P.KESHAVA RAO

Date:24.01.2020
PGS