

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.1575 of 2020

ORDER:

Heard the learned counsel for the petitioner as well as the learned standing counsel appearing for the respondent No.2 - Corporation.

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

"... this Hon'ble Court may be pleased to issue to issue Writ order or direction particularly one in the nature of WRIT OF MANDAMUS declaring the action of respondents 2 to 4 in not considering the representation/complaints of petitioner dated 03-62-019, 10-6-2019, 19-6-2019, 14-08-2019, 17-08-2019 24-10-2019, 19-11-2019 and 28-11-2019 and allowing the respondents 5 and 6 to proceed with illegal construction in spite of status quo order in IA.No.567 of 2019 in OS.No.1903 of 2019 on the file of IV Junior Civil Judge, CCC, Hyderabad and not removing the illegal constructions in Premises No.3-3-84/1 and 3-3-84/1/A, Chappal Bazar, Kutbiguda Hyderabad, as illegal, arbitrary and violative of principles of natural justice, and to pass and to pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances in the case."

3. Learned standing counsel appearing for the respondent No.2 – Corporation filed counter affidavit on behalf of respondent Nos.2 to 4.

4. From a perusal of the counter affidavit, it is revealed that the respondent No.2 – Corporation stopped the construction activity taken up by the respondent Nos.5 and 6 and issued the first notice i.e. show cause vide Notice No.84/1/ACP/TPS/C16/GHMC/2019 dated 11.06.2019 under Sections 452(1) and 461(1) of the GHMC Act calling upon the unofficial respondents to submit explanation within seven days from the date of service of the said notice. Since the owner/unofficial respondents did not submit any reply for the said show cause notice, the second notice was issued vide Notice

No.84/1/ACP/TPS.C16/GHMC/2019 dated 17.08.2019 under Section 461(1) of the GHMC Act. It is also further mentioned in the counter affidavit that the officials of the respondent No.2 – Corporation visited the subject site on routine inspection in the ward to verify the ongoing construction. After inspecting the site, the officials of the respondent No.2 – Corporation noticed that the unofficial respondents are proceeding with the construction activity by raising three floors and fourth floor unauthorizedly over the permitted Stilt Floor + 2 No. of upper floors.

5. It is also specifically stated that the respondent Nos.5 and 6 obtained building permission for construction of residential building consisting of Stilt Floor + 2 No. of upper floor vide File No.3.C16/10561/2019, vide permit No.3/C16/09195/2019 dated 14.06.2019. However, the respondent Nos.5 and 6 approached the City Civil Court, Hyderabad and filed a suit in O.S.No.1882 of 2019 against the respondent No.2 – Corporation and obtained interim orders vide IA.No.563 of 2019 to the effect that both parties are directed to maintain status quo till filing of the counter. It is also further mentioned in the counter affidavit that the petitioner herein also approached the City Civil Court and filed a suit in O.S.No.1903 of 2019 against the respondent No.2 – Corporation and the respondent Nos.5 and 6 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad. Pending suit, the petitioner filed IA.No.567 of 2019 and obtained interim order on 04.09.2019 to the affect that the respondent Nos.1 and 2 are directed to maintain status quo. Therefore, the allegation made by the petitioner that the respondent No.2 – Corporation is not taking any action on the representations given by the petitioner is false.

6. Learned standing counsel appearing for the respondent No.2 – Corporation has also brought to the notice of this Court that since the petitioner as well as the respondent Nos.5 and 6 filed suit and counter suit against each other impleading the respondent No.2 – Corporation and obtained interim orders of status quo, the respondent No.2 – Corporation is not in a position to take any steps.

7. It is relevant to mention that the interim orders granted by the trial Court in both the suits are with reference to the things obtaining as on that date relating to the construction in the subject site but that will not preclude the respondent No.2 – Corporation from considering the notices and explanation submitted, if any, by the respondent Nos.5 and 6 for passing final orders under Section 636 of the GHMC Act.

8. The learned standing counsel also brought to the notice of this Court that the respondent Nos.5 and 6 in violation of the permission granted to them laid one extra floor over and above the permitted floors. Therefore, the officials of the respondent No.2 – Corporation have removed the centering material for the extra floor and demolished the roof laid for the extra floor. To that affect, the photographs are filed along the counter affidavit.

9. In that view of the matter, the contention raised by the petitioner that the respondent No.2 – Corporation has not taken any action pursuant to their representations is not correct. Since the respondent No.2 – Corporation has already issued notices and pursuing the matter, the respondent Nos.2 to 4 are directed to initiate steps as per law.

With the above directions, the writ petition is disposed of.
As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

P. KESHAVA RAO, J

February 12, 2020
DSK

