

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.4101 of 2020

ORDER:

Heard the learned counsel for the petitioner as well as the learned Standing counsel appearing for the 2nd respondent – Corporation.

The prayer sought in the writ petition is as under:

“... to issue writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents 3 and 4 in trying to demolish the 3rd floor and pent house in H.No.2-4-118/64/2, admeasuring 100 square yards. Swaroopnagar, Uppal by issuing notice u/s 452 (1) and 461 (1) of HMC Act dated 07.01.2020, 04.02.2020 and notice u/s 636 of HMC Act dated 12.02.2020 respectively without considering the petitioner's replies made on 14.01.2020, 07.02.2020 and 13.02.2020 as illegal, arbitrary, unjust, unreasonable and contrary to Art. 14 of the Constitution of India and consequently direct the respondents not to demolish 3rd floor and pent house in H.No.2-4-118/64/2, admeasuring 100 square yards, Swaroopnagar, Uppal, in the interest of justice.”

Learned counsel for the petitioner submits that the petitioner purchased plot No.64 in Sy.Nos.119 and 142, Block No.IV, admeasuring 100 square yards, situated at Swaroopnagar, Uppal Kalan Village, from Smt. D. Prameela under registered sale deed dated 28.10.2015. With an intention to construct a building, the petitioner applied for building permission vide application dated 21.09.2018 and accordingly permission was granted vide file No.3/C2/18108/2018. In compliance with the permission granted, the petitioner provided front set back of 1.5 meters and constructed ground + 3 floors and pent house though permission was granted for ground + 2 floors. The petitioner also paid the unauthorized

construction penalty as per notice dated 10.12.2019 issued by the municipal authorities.

On 07.01.2020, notice under Sections 452(1) and 461(1) of the Hyderabad Municipal Corporation Act (for short, “the Act”) was issued calling for an explanation from the petitioner within seven days. In response to the said notice, the petitioner submitted her reply on 14.01.2020 stating that she paid the unauthorized construction penalty. Therefore, the third floor and the pent house cannot be termed as unauthorized construction. However, without considering the said explanation, another notice under Sections 452(1) and 461(1) of the Act was issued calling for an explanation for making unauthorized construction and as to why the unauthorized structure should not be removed. In reply to the said notice, the petitioner once again submitted her explanation on 07.02.2020 reiterating her earlier stand mentioned in the explanation dated 14.01.2020. After receiving the said explanation, without considering the same, respondent Nos.3 and 4 issued final notice dated 12.02.2020 under Section 636 of the Act asking the petitioner to remove unauthorized structure within 24 hours failing which the same will be removed by the Corporation and expenses thereof will be recovered from the petitioner. Immediately, the petitioner submitted her explanation dated 13.02.2020.

Learned counsel for the petitioner submits that respondent Nos.3 and 4, without even considering the explanations submitted by the petitioner, issued final notice dated 12.02.2020. In fact, on

24.02.2020, respondent Nos.3 and 4 came to the subject site and threatened to demolish the third floor and pent house.

From a perusal of the notices issued to the petitioner, it is evident that the explanations submitted by the petitioner are not considered, particularly, in the final notice dated 12.02.2020 issued under Section 636 of the Act, there is absolutely no reference with regard to the explanations submitted by the petitioner. Therefore, the action of the respondent – Corporation in issuing the final notice, which is impugned in the present writ petition, is arbitrary, illegal and violative of principles of natural justice.

The 2nd respondent, being one of the instrumentalities of the State, is under an obligation to consider the explanations submitted to the notices and pass appropriate orders. However, in the case on hand, the notices issued to the petitioner reveal the callousness on the part of the authorities in issuing the notices in a mechanical manner, more particularly, without even mentioning the explanation submitted by the petitioner. Hence, the action of respondent Nos.2 to 4 in issuing the final impugned notice is deplorable and liable to be set aside.

Accordingly, the writ petition is allowed, setting aside the impugned notice vide No.UC/18108/TPS/C-2/LBNZ/GHMC/2019 dated 12.02.2020.

Learned Standing counsel appearing for the 2nd respondent – Corporation submits that the 2nd respondent will consider the

explanation submitted by the petitioner and pass appropriate orders as per law.

In these circumstances, there shall be a direction to the respondents not to take any coercive steps till the final orders are passed. No order as to costs.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 25.02.2020.

Note: Issue CC tomorrow.
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