

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION NO.8404 OF 2019

09.01.2020

Between:

Are Rajanna

...Petitioner

And

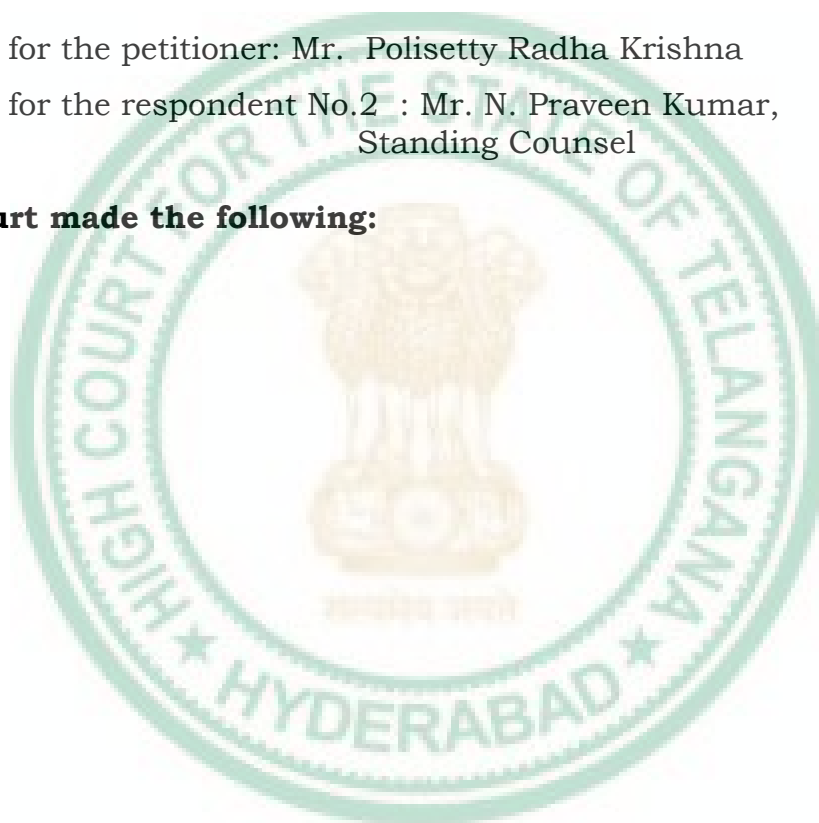
The Government of Telangana and another

...Respondents

Counsel for the petitioner: Mr. Polisetty Radha Krishna

Counsel for the respondent No.2 : Mr. N. Praveen Kumar,
Standing Counsel

The Court made the following:



ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner has challenged the legality of the provisional notice dated 16.04.2019 issued by the Commissioner, Municipal Council, Nirmal, the respondent No.2, whereby the respondent No.2 has directed the petitioner to demolish the illegal construction raised by him, failing which action under Section 340 of the Telangana Municipalities Act, 1965 ("the Act", for short) shall be taken against the petitioner.

Briefly, the facts of the case are that the petitioner had purchased two plots, namely plot Nos.11 and 12, located in Survey Nos.44 and 62 of Venkatapur Sivar in Nirmal Municipal limits, to an extent of 840 square yards, from their vendors, Mr.Siddula Sayanna and four others, through a registered sale deed. On 26.10.2017, the petitioner had submitted an application to the respondent No.2 for seeking permission to construct a building consisting of a stilt and three upper floors. The said building was to be constructed for residential purpose. By order dated 23.04.2018, the respondent No.2 granted permission for the said construction. Initially, the petitioner completed the construction as sanctioned by the Municipality. However, subsequently, he had constructed the fourth floor, with a view to construct water tanks above the fourth floor.

Since the construction of the fourth floor was, *prima facie*, an illegal one, on 04.04.2019 the petitioner received a provisional notice under Sections 228(2) and 217(2) of the Act. Immediately, by reply dated 12.04.2019, the petitioner responded to the said notice. According to him, he had constructed the fourth floor with an intention to construct water tanks above the said fourth floor. However, despite the fact that he had submitted his response,

without considering the same, the respondent No.2 had issued the impugned provisional notice dated 16.04.2019 to the petitioner. Hence, this writ petition before this Court.

Mr. Polisetty Radha Krishna, the learned counsel for the petitioner, has vehemently contended that while issuing the impugned provisional notice, the respondent No.2 has not considered the explanation offered by the petitioner. Therefore, the said notice is in violation of the principles of natural justice. Hence, it deserves to be set aside.

Secondly, the illegal construction can be compounded by the respondent No.2 under Section 340 of the Act. In order to buttress his plea, the learned counsel has relied on the judgments rendered by the learned Single Benches of this Court in the case of **Smt. Fatimunnisa Begum vs. Nagar Panchayat, Peddapally** (W.P.No.29388 of 2012 decided on 18.12.2012), in the case of **Adicherla Srinivas and others vs. The Peddapalli Nagar Panchayat and others** (in W.P.Nos.40038 of 2012 & 9559 and 9838 of 2013 decided on 19.11.2013), and in the case of **Chintham Suguna and another vs. The Government of Telangana and others** (in W.P.Nos.23188 and 23202 of 2014 decided on 22.08.2014).

On the other hand, Mr. N. Praveen Kumar, the learned Standing Counsel for the respondent No.2, submits that in the impugned provisional notice, the explanation offered by the petitioner on 12.04.2019 has already been mentioned. Since the explanation was not a proper one, the provisional notice dated 16.04.2019 was issued to the petitioner. Hence, the learned Standing Counsel has supported the said provisional notice.

A bare perusal of the provisional notice dated 16.04.2019 clearly reveals that the explanation given by the petitioner was duly considered. For, the notice itself states that *“there is no proper explanation from you and the same was contrary to law and against the rules as per G.O.Ms.No.168 dated 07.04.2012”*. Therefore, the learned counsel for the petitioner is unjustified in claiming that the explanation given by the petitioner has not been considered.

Section 340 of the Act is as under:-

“340. Penalty for unlawful building :- (1) *Notwithstanding anything contained in the Act, any person who, whether at his own instance or at the instance of any other person or anybody including a department of the Government, undertakes or carries out construction or development of any law in contravention of the statutory master plan or without permission, approval or sanction or in contravention of any condition subject to which such permission, approval or sanction has been granted shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to ten per cent of the value of land or building including land in question as fixed by the Registration Department at the time of using the land or building. Provided that the fine imposed shall, in no case be less than fifty per cent of the said amount.”*

A bare perusal of the said provision clearly reveals that there is no power granted to the Municipality for compounding an illegal construction. In fact, the provision is limited to providing a punishment of imprisonment, or imposition of fine. Therefore, it is a penal provision. Hence, the learned counsel for the petitioner is unjustified in claiming that the Municipality has the power to compound, or to regularise any illegal construction under the said provision.

In the cases of **Smt. Fatimunnisa Begum** (supra), **Adicherla Srinivas and others** (supra) and **Chintham Suguna and another** (supra), the learned Single Benches of this Court have ignored the

tenor, letter and spirit of Section 340 of the Act. Therefore, the said judgments are *per incuriam*. Hence, not binding in nature.

It is, indeed, trite to state that no construction can be raised contrary to the sanction plan. The Act does not contain any provision giving power to the Municipalities for compounding or regularising an illegal construction. Since, admittedly, the petitioner has raised the fourth floor contrary to the sanction plan dated 23.04.2018, the respondents were justified in issuing the impugned provisional notice dated 16.04.2019.

Therefore, this Court does not find any merit in the present writ petition; it is, hereby, dismissed. The respondent No.2 is directed to take action against the illegal construction raised by the petitioner immediately and strictly in accordance with law. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

09th January, 2020
JSU

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