

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.12890 of 2009

ORDER:

The writ petition is filed by the petitioners seeking to issue writ of Mandamus declaring the action of the respondents in not considering the case of the petitioners for regularization of the deviations off the building under property admeasuring 514 sq. yards under premises bearing MCH No. 10-3298/4, admeasuring 308.15 sq. yards under premises bearing MCH No. 103-298/2 and 10-3-298/3 situated at Humayun Nagar, Hyderabad made under GO Ms.No. 901, Municipal Administration and Urban Development (M1) Department dated 31.12.2007 is highly illegal, arbitrary, unjust, unconstitutional and violative of principles of natural justice and contrary to the Municipal corporation of Hyderabad Act, 1955 and consequently direct the respondents to consider the case of the petitioner made under regularization applications dated 27.06.2008 and 15.07.2008 under GO Ms.No. 901,

Municipal Administration and Urban Development (M1) Department dated 31.12.2007.

2. The case off the petitioners in brief is that the petitioners 1 to 4 are the lawful owners and possessors of the property admeasuring 514 sq. yards under premises bearing MCH No. 10-3-298/4, Humayun Nagar, Hyderabad, having purchased the same under registered sale deed dated 09.10.1993 vide document No. 30/1995. Petitioners 5 and 6 are the lawful owners and possessors of the property admeasuring 308.15 sq. yards under premises bearing MCH No. 10-3-298/2 and 10-3-298/3, Humayu Nagar, Hyderabad, having purchased the same under registered sale deed dated 06.02.2003 vide document No. 345/2003.

3. The petitioners further submits that the petitioners 1 to 4 registered a Development Agreement-cum-General Power of Attorney with regard to the above subject property in favour of Mohammed Osman and another on 30.04.2008 vide registered document No. 2502/2008

registered in the office of the Sub-Registrar, Golconda for construction and development of the site. As per the said agreement the owner of the land had handed over the actual and physical possession of the land to the GPA holder with selling rights. The petitioners 5 and 6 also executed an agreement of sale-cum-general power of attorney with possession in favour of Mohammed Osman and another on 07.02.2008 vide registered document No. 97/2008 registered in the office of the Sub-Registrar, Golconda and delivered physical possession of the same and thereafter both the petitioners applied for building permission for construction. After inspection of the site, the respondent Corporation granted permission for the same. It is further contended that the petitioners constructed the building within the stipulated period granted by the respondent Corporation at the time of sanction of building permission strictly in accordance with the sanctioned plan, but the petitioner constructed a pent house on roof without obtaining any valid permission. The

petitioners wanted to rectify the mistake under the Government orders of Andhra Pradesh Regulation and Penalisation of unauthorisedly constructed buildings and buildings constructed in deviations of the sanctioned plan Rules, 2007 vide G.O.Ms.No. 901, Municipal Administration and Urban Development (M1) Department dated 31.12.2007 and the petitioners application dated 15.07.2008 was well within the prescribed time. It is submitted that because of the pendency of the writ petition before the Hon'ble Division Bench of this Court filed by different parties aggrieved by the said G.O., the regularization in accordance with G.O. could not be considered by the authorities, but however, the Division Bench of this Court clarified the legal position and permitted the Corporation to regularize the same as per the guidelines given in the judgment passed by this Court. The respondent Corporation kept pending the regularization application filed by the petitioners pending since 15.07.2008 and aggrieved by the same the petitioners approached this

Court seeking to give direction to the respondents not to take any coercive steps by way of demolition of deviation portion of the building under property admeasuring 514 sq. yards under premises bearing MCH No. 10-3-298/4, admeasuring 308.15 sq. yards under premises bearing MCH No. 103-298/2 and 10-3-298/3 situated at Humayun Nagar, Hyderabad made under GO Ms.No. 901, Municipal Administration and Urban Development (M1) Department dated 31.12.2007 till the petitioners' application for regularization is disposed off.

4. Counter affidavit has been filed the respondent Nos. 1 and 2 on 24.02.2022 and at Para No.6 of the counter affidavit it is specifically contended that the petitioners has constructed a pent house on roof without obtaining any valid permission. The petitioner in order to rectify the deviation work under the Government Orders vide G.O Ms.No. 901, Municipal Administration and Urban Development (M1) Department, dated 31.12.2007, made an application to the respondent No.2 for regularization of the

deviation of pent house vide application No. 05898/C7/CZ/2008, Dated 27.06.2008 and dated 15.07.2008. The respondents further contend that the deviation work could not be regularized by the corporation since the issue is pending in Hon'ble Supreme Court and after receiving the orders from the Hon'ble Supreme Court necessary action will be taken by the respondent Corporation to process the application of unauthorized construction of pent house in the subject property.

5. Recording the same the present writ petition is disposed of directing the respondent Corporation to process the application of the petitioners for regularization of the deviations of the building made vide application dated 27.06.2008 and 15.07.2008 soon after the passing of the orders by the Hon'ble Apex Court of India in accordance with law.

6. It is also observed that appropriate orders should be passed by the respondent Corporation on the two applications dated 27.06.2008 and 15.07.2008 of the

petitioner within a reasonable period soon after passing of the orders by the Hon'ble Apex Court of India. No costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

April 18, 2022
skj

MRS JUSTICE SUREPALLI NANDA

HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.12890 of 2009

April 18, 2022

skj