

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

**AND**

**THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

**WRIT APPEAL No.836 of 2022**

**JUDGMENT:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. N.Ramesh, learned counsel for the appellants; Mr. Pasham Krishna Reddy, learned Government Pleader appearing for respondent No.1; Mr. M.Durga Prasad, learned Standing Counsel for respondents No.2 and 3; and Mr. Mahadev Anyarambhatla, learned counsel appearing for respondents No.4 to 6.

2. This writ appeal is directed against the order dated 11.11.2022 passed by the learned Single Judge dismissing W.P.No.37852 of 2022 filed by the appellants as the writ petitioners.

3. Appellants had filed the related writ petition seeking the following relief:

“...to issue a writ, order or direction, more particularly a writ of mandamus declaring the notice issued by the 3<sup>rd</sup> respondent vide notice No.476/TPS/C-

1/LNZ/GHMC/2022 dated 21.09.2022 by directing the petitioners to vacate the portion in ground floor of S.S.Towers, on plot No.D2, Sy.No.315, Kamala Nagar, Kapra, near Kapra GHMC Circle Office, Medchal Malkajgiri District without issuing any notice and without following any procedure contemplated under the provisions of Municipal Corporation Act and its rules and trying to demolish the flats which are in the occupation of the petitioners, as illegal, arbitrary, unjust, violation of principles of natural justice, abuse of process of law and against the provisions of Municipal Corporation Act and the rules thereunder and set aside the notice issued by the 3<sup>rd</sup> respondent vide notice No.476/TPS/C-1/LNZ/GHMC/2022 dated 21.09.2022 in the interest of justice.”

4. Without entering into the *inter parte* contentious issues between appellants and respondents No.4 to 6, we find that appellants had complained before the learned Single Judge that they were not served with the show cause notice and the speaking order. Without complying with principles of natural justice, respondents No.2 and 3 were trying to demolish the structure erected by the vendors of the appellants in the stilt portion. However, learned Standing Counsel representing respondents No.2

and 3 submitted that copy of the show cause notice was served on the appellants, though the same was denied.

5. Learned Single Judge held that no material could be placed by the appellants to show that they had obtained construction permission from respondents No.2 and 3. Learned Single Judge further observed that Court had given opportunity to the appellants to submit building permission etc. But, the appellants failed to do so. Therefore, learned Single Judge took the view that directing the respondents to issue show cause notice and thereafter to pass orders would be an empty formality. Consequently, learned Single Judge held that there was no reason to interfere with the impugned notice dated 21.09.2022 and dismissed the writ petition.

6. In the course of hearing today, learned Standing Counsel representing respondents No.2 and 3 submitted that the show cause notice dated 13.07.2022 was pasted at a conspicuous place of the structure. Copy of the speaking

order dated 01.09.2022 was also pasted at a conspicuous place.

7. On a perusal of the impugned notice dated 21.09.2022, we find that respondent No.3 had noted that appellants did not reply to the show cause notice dated 13.07.2022. Appellants further did not respond to the speaking order dated 01.09.2022. Consequently, holding that appellants had nothing to reply, appellants were directed to vacate the portion in the ground floor of the subject property within fifteen days.

8. Without entering into the dispute as to whether the show cause notice dated 13.07.2022 as well as the speaking order dated 01.09.2022 were served upon the appellants or not, we are of the view that it would only be in the interest of justice if an opportunity is granted to the appellants to respond to the show cause notice dated 13.07.2022 and the speaking order dated 01.09.2022.

9. View taken by the learned Single Judge that directing the respondents to issue fresh notice to the appellants

would only be an empty formality, in our considered opinion, is not the correct approach. The *useless formality theory* is no longer in vogue in many jurisdictions including ours. Principles of natural justice are the heart and soul of administration of justice. A writ court exercising the power of judicial review is concerned with the decision making process and not with the decision *per se*.

10. Since appellants are already in possession of show cause notice dated 13.07.2022 and speaking order dated 01.09.2022, they shall submit their response to respondent No.3 within a period of fifteen days from today, whereafter respondents No.2 and 3 shall pass a reasoned order in accordance with law. Whatever decision is taken, the same may be communicated to the appellants. We further clarify that the observations of the learned Single Judge made in paragraph 5 of the order dated 11.11.2022 shall not influence the decision to be taken by respondents No.2 and 3.

11. This disposes of the writ appeal.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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**UJJAL BHUYAN, CJ**

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**C.V.BHASKAR REDDY, J**

20.12.2022  
vs