HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION NO: 34193 OF 2024

Between:

Akhraj Jain, S/o Late Jugraj, Aged 59 years, Occ. Business, R/o H.No.23-6-893/1/C, Shah Ali Banda, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, Municipal Administration and Urban Development, Secretariat, Hyderabad.
2. Greater Hyderabad Municipal Corporation, Rep. by its Commissioner, Office at Lower Tank Bund, Hyderabad.
3. Greater Hyderabad Municipal Corporation, Rep. by its Deputy Commissioner, Circle No.15, Secunderabad Zone, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the issuing of the speaking order No.54/2/TPS/DC/CIR-15/SBZ/GHMC/2024 dated 29-04-2024 pursuant to the issuance of Show Cause Notice Lr.No.54/2/UC/CIR-15/TPS/GHMC/2024 dated 15-04-2024 by the 3rd respondent as arbitrary, illegal, without considering the reply of the petitioner dated 18-04-2024 as arbitrary, illegal and in violation of Section 455AA in Greater Hyderabad Municipal Corporation Act, 1955 and consequently set aside the same

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

stay all further proceedings in the speaking order No.54/2/TPS/DC/CIR-15/SBZ/GHMC/2024 dated 29-04-2024 Pursuant to the issuance of Show Cause Notice Lr.No.54/2/UC/CIR-15/TPS/GHMC/2024 dated 15-04-2024 by the 3rd respondent, pending disposal of the writ petition

Counsel for the Petitioner: SRI D. KAVAL KUMAR

Counsel for Respondent No. 1: GP FOR MUNICIPAL ADMINISTRATION & URBAN DEVELOPMENT

Counsel for Respondent Nos. 2 & 3: SRI MIDDE ARUN KUMAR, SC FOR GHMC

The Court made the following: ORDER

HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.34193 of 2024

ORDER:

Heard Mr. Dr. D. Kaval Kumar, learned counsel appearing for the petitioner and Sri Midde Arun Kumar, learned Standing Counsel for respondent Nos.2 and 3. Perused the record.

2. The petitioner had obtained building construction permission vide proceedings dated 08.05.2023 for construction of one stilt and 4 upper floors. According to 3rd respondent, petitioner made construction without maintaining mandatory setbacks as per G.O.Ms.No.168 dated 07.04.2012. The 3rd respondent had issued a show cause notice dated 15.04.2024 and petitioner submitted explanation on 18.04.2024. Thereafter on conducting hearing, 3rd respondent has passed speaking order dated 29.04.2024 directing the petitioner to remove the deviated portion within (15) days from the date of receipt

of said notice. Challenging the said notice, petitioner filed the present writ petition.

3. Learned counsel for the petitioner would submit that the said deviations are less than 10%, therefore petitioner is intending to approach 2nd respondent by way of submitting an application under Section 455 (A) of Greater Hyderabad Municipal Corporation Act, 1955 (for short "GHMC Act") and petitioner would avail the remedy of appeal under Section 655 of GHMC Act.

4. Whereas Sri Midde Arun Kumar, learned standing counsel appearing for respondent Nos.2 and 3 on instructions would submit that the petitioner made construction in deviation to the building permission order dated 08.05.2023. Therefore, 3rd respondent has passed speaking order dated 29.04.2024 strictly in accordance with procedure laid down under GHMC Act. There is no error in it.

5. As discussed supra, 3rd respondent issued show cause notice dated 15.04.2024 calling explanation from the petitioner as to why action should not be taken against the petitioner for making construction in deviation to the building permission order dated 08.05.2023. Petitioner submitted his explanation dated 18.04.2024. Thereafter, 3rd respondent has passed speaking order dated 29.04.2024. There is no allegation by the petitioner against the 3rd respondent that he has passed the impugned speaking order dated 29.04.2024 in violation of principles of natural justice and the procedure laid down under the GHMC Act. Petitioner has to prefer an appeal under Section 655 of GHMC Act challenging the speaking order dated 29.04.2024.

6. In the light of the aforesaid discussion and taking into account the submissions made by the learned counsel for the petitioner, this writ petition is disposed of granting liberty to the petitioner to prefer an appeal challenging the speaking order dated 29.04.2024.

Liberty is also granted to the petitioner to approach the 2nd respondent by way of an application under Section 455 and 455 (A) of GHMC Act within (10) days from the date of receipt of copy of this order, till such time the respondent Nos.2 and 3 are directed not to proceed further pursuant to the speaking order dated 29.04.2024. If the petitioner failed to prefer any appeal within 10 days, liberty is granted to R-2 and R-3 to take action against the petitioner. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

SD/-K. AMMAJI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

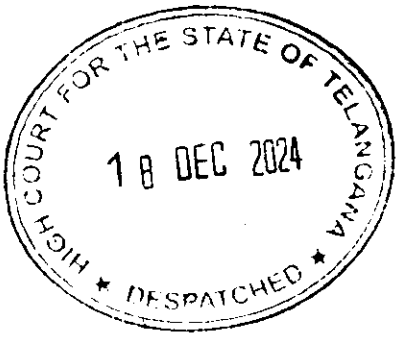
1. The Commissioner, Greater Hyderabad Municipal Corporation, Office at Lower Tank Bund, Hyderabad.
2. The Deputy Commissioner, Greater Hyderabad Municipal Corporation, Circle No.15, Secunderabad Zone, Hyderabad.
3. One CC to Sri D.Kaval Kumar Advocate [OPUC]
4. Two CCs to GP For Municipal Administration & Urban Development, High Court for the State of Telangana. [OUT]
5. One CC to Sri Midde Arun Kumar, Advocate(OPUC)
6. Two CD Copies

MBC
BS

HIGH COURT

KL,J

DATED: 05/12/2024



ORDER

WP.No.34193 of 2024

DISPOSING OF WRIT PETITION

WITHOUT COSTS

18/12/24