
(2005) 09 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21336 of 2005

P. Phanindra Babu

APPELLANT

Vs

Govt. of A.P., Municipal Administration and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Andhra Pradesh Regularisation of the Unauthorized Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003 — Section 3
Hyderabad Municipal Corporation Act, 1955 — Section 452, 636

Citation : (2005) 6 ALT 603

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Y. Srinivasa Murthy and T.S. Anand, for the Appellant; G.P. for Respondnt No. 1 and N. Ranga Reddy, S.C. for Municipal Corporation Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner obtained a registered agreement of sale-cum-General Power of Attorney dated 27-8-1997 from the owners of premises bearing D. No. 47-14-3, Dwarakanagar, Ward No. 28, Visakhapatnam. He obtained building permission dated 11-9-1997 from the second respondent Corporation and made construction in accordance with plan. It appears that petitioner thereafter made an application on 7-9-1998 seeking regularization of the deviations/illegal constructions made by him. The petitioner states that the said application is under consideration. In the meanwhile, the second respondent issued notice u/s 452 of Hyderabad Municipal Corporations Act, 1955 (HMC Act, for brevity) on 20-09-2005 stating that the petitioner has violated the provisions of HMC Act, Master Plan Zoning Regulations and the Rules contained in G.O.Ms. No. 423 dated 31-7-1998 by construction of shop rooms in part of the cellar floor meant for parking causing inconvenience to the public. The petitioner has given three days time to show cause as to why the illegal constructions in parking area could not be removed. The petitioner did not submit any explanation within three

days and therefore on 23-09-2005 second respondent passed orders u/s 636 of HMC Act directing the petitioner to pull down the illegal constructions in the cellar floor/parking area. In this writ petition, the petitioner challenges the notice u/s 452 of HMC Act and the order u/s 636 of HMC Act passed by the second respondent.

2. Learned Counsel for the petitioner, Sri Y. Srinivasa Murthy, contends that when the application made by the petitioner on 07-09-1998 seeking regularization of illegal constructions is pending, it is illegal on the part of the second respondent to issue the impugned notices. Secondly, he would contend that as per A.P. Regularisation of the Unauthorized Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003 (the Act, for brevity), there is no prohibition even for regularizing the constructions made in cellar floor/parking areas and therefore the Government would (not) rely on the relevant instructions in G.O.Ms. No. 419 dated 30-7-1998. Per contra, the learned standing counsel, Sri Ranga Reddy, submits that G.O.Ms. No. 419 dated 30-7-1998 was validated by the Act and therefore as per said G.O., the unauthorized constructions made in parking spaces cannot be regularized.

3. This Court has considered the submissions made by the learned Counsel carefully and does not find any merit in the submissions. Admittedly, the petitioner made an application on 07-9-1998 seeking regularization of unauthorized constructions. The very application made by the petitioner would indicate that the petitioner made unauthorized constructions but without approaching the second respondent, the petitioner took it for granted that the application is still under consideration. Secondly, the submission that under the provisions of the Act, there is no prohibition for regularizing unauthorized constructions in parking areas is without any substance. The Government issued G.O.Ms. No. 419 dated 30-07-1998 revising the scheme of regularisation of unauthorized constructions in Municipal Corporations/Municipalities. The Government, however, directed that regularization of unauthorized constructions shall not be considered in certain cases where public interest and safety are likely to be affected. As per the said G.O., the construction made in parking spaces, any areas earmarked for recreation use etc., cannot be regularized. The orders of the Government in G.O.Ms.No. 419 was quashed by this Court in W.P. No. 25011 of 1998 dated 25-01-2002. Therefore, the State enacted the Act with a view to validate G.O.Ms. No. 419dated 30-07-1998 so as to regularize the regularization scheme. As per Section 3 of the Act, notwithstanding anything contained in any Judgment, the orders issued in G.O.Ms. No. 419 dated 30-07-1998 was validated authorizing the competent authorities to regularize the unauthorized constructions in accordance with the orders issued for regularization in G.O.Ms. No. 419. Therefore, the submission that even the constructions made in cellar floor/parking areas can be regularized, cannot be considered.

4. In this case, the petitioner was given sufficient time to show cause, but he did

not submit his explanation and therefore the second respondent issued orders u/s 636 of HMC Act directing the petitioner to remove/pull down the constructions made in the cellar floor intended for parking area in premises bearing D. No. 47-14-3, Dwarakanagar, Ward No. 28, Visakhapatnam. The orders of the second respondent do not in any manner suffer from any illegality or infirmity. If the petitioner seeks some time for complying with the impugned order/orders, he may approach Visakhapatnam Municipal Corporation for extension of time, in which case, such request may be considered by the Corporation.

5. The writ petition is accordingly dismissed. No costs.