

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

SATURDAY, THE TWENTY THIRD DAY OF SEPTEMBER

TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
WRIT PETITION NO: 4948 OF 2023



Between:

Sagar Nagar RTD Layout Plot Owners and Residences Welfare Association,
Regd. No, 210 of 2022, #8-4-6/3, 4th floor, Tara Gev Apartment, Doctors
Colony, PedaWaltair, Visakhapatnam. Rep. by its Secretary.

Petitioner

AND

1. The State of Andhra Pradesh, Rep. by it's Principle Secretary (MAandUD), Secretariat buildings, Velagapudi, Amaravathi.
2. The Commissioner, Greater Visakhapatnam Municipal Corporation, Visakhapatnam.
3. The District Collector, Visakhapatnam district.
4. The Zonal Commissioner, Zone-II, Mathurawada, Greater Visakhapatnam Municipal Corporation, Visakhapatnam.
5. The District Minorities Welfare Officer, District Collector's Office, Visakhapatnam.
6. The Visakhapatnam Metropolitan-Region Development Authority, 8th Floor, Udyog Bhavan, Siripuram Junction, Visakhapatnam. Rep. by it's Planning Officer.
7. Sagar Nagar Masjid-e-Ayesha Association, #4-160, HIG-II-160, Sagar Nagar, Yendada, Visakhapatnam. Rep. by its President

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 a writ of MANDAMUS or any other appropriate writ, order, or direction declaring the action of the 2nd respondent in not considering the several representations, lastly dated 12.12.2022 requesting to stop and demolish the construction being done by the 7th respondent in Plot No. 26 of the Visakhapatnam Regional Transport Department Employee's Co-operative House Building Society Limited, Sagar Nagar, Visakhapatnam, illegally without permissions and causing severe inconvenience to the residents, as illegal, arbitrary, unconstitutional, violative of Articles 14 and 300-A of Constitution of India and violative of the Provisions of the Municipal Corporation Act in the interest of justice and consequently C.OMMAND the 2nd respondent to demolish the unauthorized construction raised by the 7th respondent in the subject property in the interest of justice.

The petition coming on for hearing, upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri J.V.PHANIDUTH Advocate for the Petitioner and of GP FOR MA & UD for Respondents 1 & 3, Sri K. Madhava Reddy, Standing Counsel for GVMC for Respondents 2 & 4, GP FOR REVENUE for

Respondent 3, Sri V. Surya Kiran Kumar, Standing Counsel for VMRDA for Respondent 6, the Court made the following.

ORDER:

“1. Sri. K. Madhav Reddy, learned Standing Counsel appearing for respondent Nos.2 and 4 requests for adjournment for four (4) weeks.

2. Respondent No.7 is represented by Sri. K.M.R. Bala Prasad, he also requests time to file counter affidavit within four (4) weeks, though the appearance was made for respondent No.7 in April, 2023.

3. In spite of the time having been granted to the respondents to file counter affidavit, previously, except respondent Nos.2 and 4, the counter affidavit has not been filed by the rest of the respondents.

4. Learned counsel for the petitioner submits that respondent No.7 raised unauthorized construction with respect to which the petitioner raised the grievance by filing representations, last being dated 12.12.2022 before the 2nd respondent, but as any action on the representations was not communicated to the petitioner, the present writ petition was filed.

5. Sri. K. Madhav Reddy, learned Standing Counsel referring to the counter affidavit submits that pursuant to the petitioner's Spandana compliant, inspection of the site was made and it was found that respondent No.7 constructed an unauthorized asbestos shed to an extent of 121.00 Sq.Mts in Plot No.26 of RTD Layout L.P.No.10/2007 and consequently Show Cause Notice under Section 452(1) and 461(1) of Andhra Pradesh Municipal Corporation Act, 1955, bearing No. /1086/GVMC/UC/2022, dated 07.05.2022, was issued directing the respondent No.7, to show sufficient cause as to why the unauthorized construction be not removed/altered or pulled down within seven (7) days from the date of receipt of the copy of said notice, failing which further action would be taken.

6. Sri. K. Madhav Reddy, learned Standing Counsel submits that respondent No.7 has not filed any reply nor complied with the notice till date. He further submits that for the reasons in the counter affidavit, i.e., possibility and apprehension of disturbance of public peace, law and order situation the

authorities have not proceeded further pursuant to the notice dated 07.05.2022.

7. Prima facie, in view of this Court, that once on inspection, the construction was found to be unauthorized, and the notice was issued under the provisions of the Municipal Corporation Act, giving time and opportunity to the respondent No.7, to show cause and if reply was not filed and also the notice was not complied with, the respondent authorities should have proceeded, under the statutory provisions, to implement the law. The plea as raised in the counter affidavit not to effect the law, will give rise to many more unauthorized constructions in violation of the statutory rules. If there is any apprehension as expressed in the counter affidavit, it is for the law enforcing authority-the State to take appropriate measures to ensure that in enforcing the law, public peace and order is not disturbed, but is maintained.

8. Considering that respondent No.7 has yet not filed any reply but as the Municipal Corporation authorities have also not taken any further action, at the request of the learned counsel for respondent No.7, to grant time to file reply before the 2nd respondent pursuant to notice dated 07.05.2022, within a period of two (2) weeks, two (2) weeks time as last opportunity is granted to respondent No.7 to file reply before the 2nd respondent. Thereafter, the respondent No.2 shall pass necessary orders finally, in accordance with law, with opportunity of hearing to the petitioner and the respondent No.7, within a period of four (4) weeks, from the date of filing of the reply by respondent No.7. The reply shall be filed within the period aforesaid from the date of receipt of a copy of this order.

9. The copy of the said order so passed by respondent No.2 or/and the action taken shall be mentioned in the additional counter affidavit of the 2nd respondent.

10. If the reply is not filed, still the respondent No.2 shall pass final orders, in accordance with law, on expiry of four (4) weeks from today.

10. Post on 15.11.2023."

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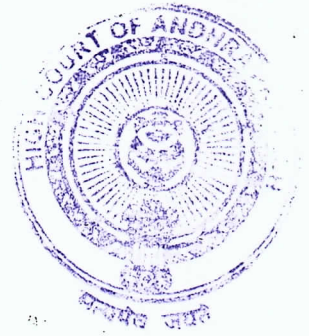
Sd/-N.NAGAMMA
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The President, Sagar Nagar Masjid-e-Ayesha Association, #4-160, HIG-II-160, Sagar Nagar, Yendada, Visakhapatnam. (by RPAD- along with a copy of petition and affidavit)
2. One CC to Sri J.V.Phaniduth, Advocate [OPUC]
3. One CC to Sri K. Madhava Reddy, Standing Counsel for GVMC [OPUC]
4. One CC to Sri V. Surya Kiran Kumar, Standing Counsel for VMRDA [OPUC]
5. Two CCs to GP FOR REVENUE, High Court of A.P. [OUT]
6. Two CCs to GP FOR MA & UD, High Court of A.P. [OUT]
7. One spare copy

psk



HIGH COURT

RNT,J

DATED:23/09/2023

LIST THE MATTER ON 15.11.2023

WP.No.4948 of 2023

DIRECTION

