

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No. 13096 of 2022

ORDER:

This Writ Petition is filed seeking a *mandamus* to declare the inaction of the 2nd respondent against the illegal acts of Respondents 3 to 5 causing damage to the 33' and 40' roads in the layouts L.P.No. 76/2011/HRO/H1 and L.P.No. 78/2011/HRO in Survey Nos., 439, 441/U, 441/UU, 441/EE and 441/EE and Survey Nos. 437/1, 438, 439 and 442/A situated at Perkit Village within the limits of Armoor Municipality, Nizamabad District and not taking any steps for protecting the said roads considering the representation submitted by the petitioners dated 20.12.2021 is nothing but arbitrary and illegal.

2. It is stated that originally, the subject land was owned and possessed by Respondents 3 to 5, however, for financial needs, they sold the same and the persons who purchased the same had formed the said layout making the entire land into 102 house site plots by forming 33' and 40' feet wide road. It is stated that the petitioners are purchasers of house site plot N. 29 in an extent of 320.75 square yards through a registered sale deed and it is ratified through a supplemental-cum-rectification deed dated 30.12.2009 and petitioner NO.2 is the owner and possessor of house site plot Nos. 35 and 36 in an extent of 270 square yards and 242 through registered sale deed dated 30.12.2020. It is also stated that Respondents 3 to 5 who are owners of the land to the northern side of the layout house site plots, with an intention to sell the same

2. Learned counsel for the petitioner Sri V. Raja Shekar Reddy submits that this Court while disposing of the said Writ Petition NO. 13610 of 2022.

3 Sri A. Ravinder Reddy, learned Senior Counsel submits that in the entire colony, there are about 80 houses and all the constructions are not made in accordance with the construction permission granted by the Authority, however, the respondent authorities, in a pick and choose manner, initiated action against the petitioner only leaving the other owners, who have made deviations. Learned Senior Counsel submits that the petitioner has been singled out and in fact, Writ Petition No. 26499 of 2021 was filed questioning the inaction of the official respondents on the illegal constructions made by the respondents therein and in the said Writ Petition, the 4th respondent and the petitioner have been arrayed as Respondents 46 and 47 respectively.

4. On the other hand, Sri Sampath Prabhakar Reddy, learned Standing Counsel for the respondent Corporation submits that initially, a notice was issued to the petitioner under Section 452(1) of the Act on 06.04.2021, on which date, the petitioner submitted explanation along with relevant documents, wherein it is stated that she is suffering from Covid and requires 30 days' time. Then, the impugned order came to be passed on 13.09.2021. He submits that in the impugned order, it is observed that on 12.04.2021, a reply was submitted stating that the so-called unauthorized construction was covered by the gram panchayat permission and due to the bad health condition, the petitioner requested 30 days' time for submitting the sanctioned

plan; subsequently, on 16.04.2021, the petitioner submitted the sanctioned plan and proceedings, on verification of which, it was revealed that permission was granted only for ground + two upper floors whereas the site is consisting of ground + three upper floors duly deviating the all-round mandatory setbacks. Having observed the same, the petitioner was directed to remove the unauthorized construction against the sanctioned plan within 24 hours. The learned Standing Counsel submits that the respondents have followed the procedure contemplated under the provisions of the Act and issued the proceedings. It is submitted that the petitioner could not make out any legal grounds to avail the remedy before this Court.

5. Learned counsel for the 4th respondent Smt. Anasuya submits that the Authorities failed to act on the representation made by the 4th respondent and in fact, they filed Writ Petition No. 21001 of 2021. It is submitted that when an illegal construction is made and when a representation is given by the 4th respondent, the official respondents issued the proceedings under Section 636 of the Act directing the petitioner to remove the unauthorized construction and the petitioner without complying with the same, has approached this Court.

6. Heard learned counsel on either side and perused the material on record.

7. The order impugned is the proceedings issued under Section 636 of the Act. Except stating that the respondents have given only 24 hours time for removing the encroachments and that there are about 80 houses in the same locality which were constructed deviating the approved plan, and the respondent

authorities have failed to take any action, the petitioner could not make out any legally-tenable ground. As there are no legal grounds put forward seeking interference of this Court under Article 226 of the Constitution of India, this Court is of the considered opinion that the Writ Petition is devoid of merits and the same is liable to be dismissed. At this stage, it is brought to the notice of the Court by the learned Senior Counsel appearing for the petitioner that in the same locality, there are about 240 structures made in deviation of the sanctioned plan and the respondent Corporation is taking action on pick and choose method. It is therefore, directed that the respondent Corporation shall initiate appropriate action against the illegal constructions, if any made contrary to the sanctioned plan, in accordance with law.

8. The Writ Petition is accordingly, dismissed. There shall be no order as to costs.

9. It is pointed out that by the learned Senior Counsel that in the impugned notice issued under Section 636 of the Act, the respondents have not stated the exact deviations / unauthorized constructions made, so as to facilitate the petitioner to remove the same. Hence, the respondent Authorities are directed to specify the deviations and issue fresh notice under Section 636 of the Act.

10. The miscellaneous Applications, if any shall stand closed.

LALITHA KANNEGANTI, J

21st March 2022

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