

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO.5371 OF 2012

ORDER:

Heard the learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development, learned Government Pleader for Home and the learned Standing Counsel for Greater Hyderabad Municipal Corporation.

2. This writ petition is filed seeking to issue writ of Mandamus declaring the action of respondent Nos.1 to 8 in not taking any action against respondent Nos.9 to 12 for their illegal construction in the premises bearing G.H.M.C.Nos.23-1-821, 821/1, 821/2, 821/3 and 23-1-819 (portion) admeasuring about 805.00 square yards situated at Hafez Danka Mosque, X Road Junction, Moghalpurah, Charminar East, Hyderabad-2, and on the adjoining common passage on the western side of the premises viz., infringing, violating and depriving the petitioners in particular and the common public in general from enjoyment of their fundamental right to life as illegal and arbitrary; consequently direct them to demolish the illegal cellar/basement structure and stay all further illegal construction activities in the said premises; and also direct respondent Nos.2, 4 and 8 to initiate necessary legal action to prosecute and punish respondent Nos.9 to 12 for the offences committed by them as per law.

3. The case of the petitioners is that they are the absolute owners and possessors of the house property bearing G.H.M.C. No.23-1-820, Near Hafez Danka Mosque, Moghalpurah, Charminar East, Hyderabad-2 together with all the easements appurtenant and adjacent to it. There exists a narrow common passage on the eastern and southern side and a broad public passage on the western side of the petitioners' property and the premises of respondent Nos.9 to 12 and other neighbouring properties exists on the other side of these

passages. On the other side of the eastern and southern passage of the petitioners' house property, the house property of respondent Nos.9 to 12 bearing G.H.M.C.Nos.23-1-821, 821/1, 821/2, 821/3 and 23-1-819 exists. Recently, they purchased the portion of the house property bearing G.H.M.C.No.23-1-819 situated near Hafez Danka Mosque. With a view to construct a commercial corporate school multi storied building in the said premises, respondent Nos.9 to 12 got demolished the entire old structure and started constructing a multi storied building by encroaching and grabbing the common narrow public passage, which falls on the western and partly, on the northern side of the disputed site, and dug the same and thereby, closed the doors and passage available to the petitioners on the eastern and southern side of their house. Therefore, the petitioners made a representation, dated 24.01.2012, to the Commissioner of G.H.M.C. and the Commissioner of Police, Hyderabad, but no action has been initiated. Hence, the present writ petition.

4. Learned counsel for the petitioners contended that the petitioners are the adjacent house owners to the house of respondent Nos.9 to 12; that there exists a common narrow passage in between their houses; that respondent Nos.9 to 12, by demolishing their entire old structure, are constructing a commercial complex by occupying the said passage thereby causing inconvenience to the petitioners and other users; that though the petitioners made a representation, dated 24.01.2012, to respondent Nos.1 to 8, no action has been initiated, and hence, prays to direct them to demolish the illegal structures and also to take legal action against respondent Nos.9 to 12.

5. Learned Standing Counsel for respondent No.3 Corporation would submit that having regard to the fact that petitioners seems to have made a representation to the authorities alleging that respondent Nos.9 to 12 are making construction by encroaching the public passage that exists between the house of the petitioners and

respondent Nos.9 to 12 and also without leaving set backs thereby causing inconvenience to the petitioners and the common public, the said representation may be directed to be disposed of.

6. The point that arises for consideration is whether the petitioners are entitled for the relief sought for in the writ petition?

7. The case of the petitioners is that they are the adjacent house owners to the house of respondent Nos.9 to 12. By demolishing the old structure, respondent Nos.9 to 12 are constructing a commercial complex by occupying the passage that exists between the house of the petitioners and respondent Nos.9 to 12. Raising objection about the same, the petitioners made a complaint to the respondent Corporation and the Commissioner of Police through their representation, dated 24.01.2012, but no action has been initiated. Under these circumstances, without going into the merits of the case, the writ petition is disposed of as under:

The official respondents are directed to consider the representation, dated 24.01.2012, of the petitioners and pass appropriate orders in accordance with law within a period of two (2) weeks from the date of receipt of a copy of this order after duly giving notice to the petitioner and respondent Nos.9 to 12. There shall be no order as to costs.

JUSTICE G. CHANDRAIAH

29th February, 2012

AMD

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO.5371 OF 2012

Date:29.02.2012

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