

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA  
RAO**

**WRIT PETITION No.5804 of 2012**

**ORDER:**

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This Writ Petition is filed challenging the proceedings

dt.23-02-2012 of the 1<sup>st</sup> respondent rejecting the petitioner's application for regularization of building under Section 455-A of the Greater Hyderabad Municipal Corporation Act, 1955 (for short "the Act").

2. Petitioner is the occupant of site in Tilak Street, Kakinada. He initially applied for permission of ground+2 floors in the year 2010, which was approved on 26-06-2010. Later the petitioner himself requested the 1<sup>st</sup> respondent to change it to ground+1 floor and this was approved by 1<sup>st</sup> respondent on 30-08-2010.

3. But the petitioner made construction in deviation of the sanctioned plan without leaving set backs as provided in G.O.Ms.No.302 Municipal Administration dt.15-04-2008 and even constructed 2<sup>nd</sup> floor without any permission. It is also alleged that the 2<sup>nd</sup> floor is being used for commercial activity in violation of Zoning Regulations

even though the area is a residential area as per the sanctioned Master Plan of Kakinada City.

4. Respondent Nos.2 and 3 are neighbours to the petitioner. They complained to 1<sup>st</sup> respondent against the illegal construction activity being taken up by petitioner. When 1<sup>st</sup> respondent did not take any action, they filed W.P.No.31806 of 2011 before this Court. This Court, on 26-12-2011, directed the 1<sup>st</sup> respondent to take action in accordance with law against petitioner since the 1<sup>st</sup> respondent had already issued notice under Sections 452, 461 and 636 of the Act on 30-06-2011.

5. Thereafter the petitioner filed W.P.No.29164 of 2011 before this Court stating that 1<sup>st</sup> respondent was threatening to demolish the structures erected by him, which he admitted to have been made in deviation of the sanctioned plan.

6. The said Writ Petition was dismissed of on 01-11-2011 by this Court leaving it open to petitioner to submit an application under Section 455-A of the Act for regularization of the deviation, if any and in case such application is filed within four (04) weeks from that day, the 1<sup>st</sup> respondent was directed not to take any coercive steps to demolish the structures with regard to deviations

till a decision is taken in that regard.

7. Thereafter the petitioner made an application on 28-11-2011 for regularization of the deviations in the construction made by him under Section 455-A of the Act.

8. In the meantime, the 1<sup>st</sup> respondent issued a notice dt.07-02-2012 for demolition of the structures erected by petitioner.

9. This was questioned by petitioner in W.P.No.3832 of 2012, which was allowed on 14-02-2012 and the said notice was set aside. But the Court observed that it would not preclude the 1<sup>st</sup> respondent from taking any action in passing appropriate orders in the matter after giving opportunity to petitioner as well as respondent Nos.2 and 3. This was communicated to 1<sup>st</sup> respondent.

10. The 1<sup>st</sup> respondent then passed the impugned order dt.23-02-2012 rejecting petitioner's application for regularization of the constructions made by him not only on the ground that the petitioner did not enclose detailed plans and other necessary documents along with the application for regularization, but also on the ground that he had constructed 2<sup>nd</sup> floor unauthorisedly and used it for commercial activity in violation of the Zoning

regulations and also on the ground of set back violation all around. He observed that under Section 455-A of the Act, regularization is possible for the construction and is subject to condition that all parameters under relevant statutes, Master Plan, Zonal Development Plan, Building Bye-laws, Building Rules and other relevant Government Orders including Andhra Pradesh Fire Services Act, 1999 and the National Building Code are satisfied. Since there are major deviations, violations and the entire floor is unauthorized and constructed without any plan, petitioner cannot invoke Section 455-A of the Act and therefore his application is rejected.

11. Challenging this order, petitioner filed the present Writ Petition.

12. Heard Sri T.Rajasekhar Rao, learned counsel for petitioner, Sri Ancha Pandu Ranga Rao, learned Standing counsel for 1<sup>st</sup> respondent and Sri N.Siva Reddy, learned counsel for respondent Nos.2 and 3.

13. Learned counsel for petitioner contended that since petitioner originally applied for 2<sup>nd</sup> floor permission also and it was also sanctioned by the 1<sup>st</sup> respondent, even if the petitioner had subsequently restricted his construction to ground and 1<sup>st</sup> floor by obtaining a modification of the

approved plan, it was incumbent on the 1<sup>st</sup> respondent to consider the construction made on the 2<sup>nd</sup> floor also as an authorized construction.

14. This contention is wholly untenable. Since the petitioner himself had informed the 1<sup>st</sup> respondent that he does not want to construct ground + 2 floor, for which he had permission on 26-06-2010 and he subsequently obtained a changed approval on 30-08-2010 for ground +1<sup>st</sup> floor only, it is not incumbent on the 1<sup>st</sup> respondent to grant permission to petitioner for 2<sup>nd</sup> floor when petitioner himself did not want it. The petitioner cannot throw blame on 1<sup>st</sup> respondent after making construction of 2<sup>nd</sup> floor without any permission. Once the entire 2<sup>nd</sup> floor is constructed without any permission, unless the construction of the 2<sup>nd</sup> floor is in conformity with the Building Bye-laws etc. as mentioned in clause (b) of Section 455-A of the Act, the 1<sup>st</sup> respondent has no authority to regularize the said construction. Reliance on section 452-A of the Act by petitioner is totally misplaced since it is not the case of petitioner that he only violated the floor area and he admits to have constructed the 2<sup>nd</sup> floor totally without any permission.

15. In this view of the matter, I do not find any error in the order passed by the 1<sup>st</sup> respondent refusing to regularize the structures erected by petitioner in the above property.

16. Therefore the Writ Petition is dismissed. No costs.

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

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**JUSTICE M.S. RAMACHANDRA RAO**

Date: 29-02-2016

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