

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

**WRIT PETITION No.6514 of 2018**

**ORDER:**

Heard learned counsel for the petitioner and Sri D.Ramesh, learned Standing Counsel for the respondents with written instructions and perused the prayer in the writ petition with supporting affidavit and the impugned order, dated 19.02.2018, issued to the petitioner and one Sri V. Madhava Rao.

2. The prayer in the writ petition reads as follows:

“.....to issue a writ, order or direction particularly one in the nature of writ of Mandamus:

(i) declaring the order in R.C.No.CRDA-12021(51)/225/2017, (undated), signed on 19.2.2018 by the respondent No.2 as illegal and without jurisdiction besides being in violation of Articles 14 and 300-A of the Constitution of India and A.P. Act No.11/2014) and Doctrine of principles of natural justice.

(ii) directing the respondents to consider the regularization application dated 19.2.2018 besides directing not to middle with the two shops construction at D-Block, Sai Model Village, Ramavarappadu village, Vijayawada Rural

(iii) and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. The supporting affidavit averments to the extent relevant are that the original owner of an extent 10185 sq. yards in D.No.128/13 of Ramavarappadu Village, by name Chagantipati Jagadamba, entered into agreement with M/s.Sri Balaji Builders, Vijayawada, for construction of 235 residential flats consisting of G+3 floors in four

blocks A, B, C, D including two shops, covered by permission, dated 31.12.1998, of VGTMUDA and residential flats were sold to the individual and in respect of Block D consisting of 70 apartments of ground floor, ten two bed room apartments and two shops are lying with space for parking. The writ petitioner's husband appears to be the said promoter by name M/s.Sri Balaji Builders either as propriety entity or partnership entity among other partners, if any, as the case may be, not in dispute. Now coming to the two shops in question claimed to be of each 38.50020 sq. metres whether it is unauthorised construction or not, among other aspects is in issue, the respondents issued show-cause notices under Section 115(1) of the A.P. Capital Region Development Authority Act, 2014 (for short, 'the APCRDA Act'), dated 03.11.2017. It is one of the impugment that it is not served on the petitioner but for on her husband by name Narasimha Rao and he issued a reply, leave about the other persons to whom notices served by name, V. Madhava Rao and Ramana Prasad, equally if any respectively. The said show-cause notice so far as the petitioner concerned, even issued to her husband and reply given by him, which she is no way disowning to that extent for all purposes as issued to her and reply by her, however, that was issued by Zonal Assistant Director. In fact, the wording of Section 115(1) of the APCRDA Act in parameteria to Section 452(1) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'GHMC Act') and Division Bench of this Court in **Municipal Corporation of Hyderabad, represented by its Special Officer, Hyderabad v.**

**Shamsuddin Hasan Khudankmai & another<sup>1</sup>**, observed at para 4 referring to Section 452 of sub-sections 1 and 2 of the Act of the wording of sub-section (2) of if such person shall fail to show sufficient cause as required under clauses (a) or (b) of sub-section (1), to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner *may* remove alter or pull down the building or work and the expenses thereof shall be paid by the said person. From the use of the word *may* and not *shall* saying not mandatory in all cases to pull down or remove, but for such construction is injurious to public health or sanitation or public interest or encroaching any Municipal land or street or any inconvenience to the neighbour, to cause remove, other than demolition to consider, if any, as considered in similar situation referring to the provisions of the Calcutta Municipal Corporation Act in **Calcutta Corporation v. Mulchand<sup>2</sup>**.

4. Here, the impugned notice was not even issued by the person/authorities who issued the show-cause notice, but by Assistant Planning Officer of the APCRDA. The provision speaks Commissioner has to issue the notice and Commissioner has after receiving of reply to consider as to satisfy with the construction to continue by regularisation or to demolish, as the case may be, subject to the criteria. Having regard to the above, leave about to invoke Section 115 (1) of the APCRDA Act from the wording of Section

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<sup>1</sup> (1978) 1 AP LJ 459

<sup>2</sup> AIR 1956 SC 110

114(1) of the APCRDA Act it is to constructions after commencement of the Act that is prone or any other earlier existing construction also to be prone for recourse is another aspect for consideration. The written instructions received on behalf of the respondents by the learned Standing Counsel shows on 26.02.2018 pursuant to the office letter, dated 22.02.2018, before the Director, APCRDA, required to appear with documentary evidence of ownership documents, approved plan, BPS proceedings, if any, the petitioner/builder/shop owners and some other owners of D Block attended and some of the flat owners of the D Block objected saying the said building is constructed long back and entire building is also very weak with no structural stability and if the two shops are demolished entire building will be effected and unsafe for them and thereby directed to submit the sustainability of the structure to produce structural stability certificate for further consideration and they are proceeding according to law thereafter only.

5. By recording the same, the writ petition itself is disposed of for nothing to keep pending also in directing the respondents, if at all any demolition is required and if at all Section 115(1) read with 114(1) of the APCRDA Act, 2014, applies to the case of the so-called unauthorised construction by the petitioner in question, to issue notice afresh, if the above show-cause notice is not adequate by giving final notice afresh, and proceed according to law and in the meantime not to demolish any existing construction. If at all from the final orders

being passed or final notice to be given, after hearing with reference to the objections, if any, liberty is always left open to work out further rights and all other contentions raised are left open in such event.

6. Accordingly and with the above directions, the writ petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

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**Dr. B. SIVA SANKARA RAO, J**

28<sup>th</sup> February 2018

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