

Ved Electrical Stores Vs. Additional Commissioner, Mch

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Court : Andhra Pradesh

Decided On : Dec-11-2002

Reported in : 2003(1)ALD721; 2003(2)ALT65

Judge : Ar. Lakshmanan, C.J. and ;R. Subhash Reddy, J.

Acts : Hyderabad Municipal Corporations Act, 1955 - Sections 452 and 636

Appeal No. : WA No. 1952 of 2002

Appellant : Ved Electrical Stores

Respondent : Additional Commissioner, Mch

Advocate for Def. : G. Jyothi Kiran, SC

Advocate for Pet/Ap. : Akella Srinivas, Adv.

Disposition : Appeal allowed

Judgement :

Dr. AR. Lakshmanan, CJ

1. Heard Sri Akella Srinivasa Rao, learned Counsel appearing for the appellant and Smt G. Jyothi Kiran, learned Counsel for the respondent.

2. We have perused the order passed by the learned Single Judge in Writ Petition No. 23050 of 2002. Though a common order was passed in three writ petitions, only one appeal has been filed before us. The learned Judge dismissed the writ petition on the ground that the suit filed by the appellant-writ petitioner is pending and, therefore, the appellant can approach the Civil Court by making appropriate application and that it is not permissible for the appellant to approach this Court when the suit as regards the same subject matter is pending.

3. Section 452 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') provides that a written notice has to be issued by the Corporation requiring the person who is erecting or re-erecting such building or executing such work or has erected or re-erected such building or executed such work to show sufficient cause why such building or work shall not be removed, altered or pulled down. In the instant case, no such notice was issued under Section 452 of the Act. However, the respondent-Corporation straightaway issued a notice under Section 636 of the Act ordering demolition. In our opinion, the procedure followed by the Corporation in straightaway issuing the notice under Section 636 of the Act is impermissible in law. The Corporation shall follow the procedure prescribed under the Act.

4. It was argued by the learned Counsel for the Corporation that a suit for a similar relief is pending before the competent Civil Court and, therefore, the appellant can pursue the said remedy and that the writ petition is not the proper remedy available to it.

5. We are unable to countenance the said submission. The suit was filed by the appellant herein for declaration that the proceedings issued under Section 450 of the Act was illegal and for an injunction restraining the Corporation from demolishing the construction put up. In the instant case, we are concerned with the proceedings issued under Section 636 of the Act straightaway ordering demolition. As already stated, the said proceedings under Section 636 of the Act without issuing a notice under Section 452 of the Act is unsustainable in law. We, therefore, allow the Writ Appeal and reserve liberty to the Corporation to initiate proceedings against the appellant in accordance with the procedure contemplated

under the Act. The notice issued under Section 636 of the Act is set aside. In the meanwhile, there will be stay of demolition.

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