

HIGH COURT FOR THE STATE OF TELANGANA

* * * *

WRIT PETITION No.41702 of 2022

Between:

Smt. Gunturu Nagarjuna Kanthamani
W/o Sri Mukhesh Babu,
Aged about 55 Years, Occ: House Hold,
R/o H.No.30-105, Nandanagar, H.M.T Township,
Chintahl, Khuthbulaapur Mandal,
Medchal-Malkajigiri District

..Petitioner

and

1. The State of Telangana
Represented by its Principle Secretary
Department of Municipal Administration and Urban Development,
Secretariat, Burgula Ramakrishna Rao Bhavan, Hyderabad
2. Commissioner and Director of Municipal Administration,
represented by its Director,
640, A.C.Guards, Hyderabad
3. The Suryapet Municipality Represented by its Commissioner,
Suryapet, Suryapet District
4. The District Collector
Suryapet District
5. Smt. Devulapally Rama Devi W/o Ashok Kumar,
Aged about 60 Years Occ: House Hold,
R/o. H.No.1-6-131/A1, Near Ramalingeshwara Temple,
Suryapet, Suryapet District

... Respondents

DATE OF JUDGMENT PRONOUNCED: 24.01.2023

THE HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

LALITHA KANNEGANTI, J

*** THE HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI**

+ WRIT PETITION No.41702 of 2022

% Dated 24.01.2023

Between:

Smt. Gunturu Nagarjuna Kanthamani
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Aged about 55 Years, Occ: House Hold,
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Represented by its Principle Secretary
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represented by its Director,
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Aged about 60 Years Occ: House Hold,
R/o. H.No.1-6-131/A1, Near Ramalingeshwara Temple,
Suryapet, Suryapet District

... Respondents

!	Counsel for Petitioner	: Mr. R. Pavan Reddy
^	Counsel for Respondent Nos. 1 and 2	: Government Pleader for Municipal Administration
^	Counsel for the respondent No.3	: Mr. M. Ram Mohan Reddy
^	Counsel for the respondent No.4	: Government Pleader for Revenue
^	Counsel for the respondent No.5	: Mr. J. Ashvini Kumar

<GIST:

> HEAD NOTE:

? Cases referred

¹ 2001 (3) ALD 600

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.41702 of 2022

O R D E R:

The writ petition is filed seeking the following relief:

“ ... to issue the Writ of MANDAMUS or any other appropriate Writ declaring the action of the 2nd Respondent in issuing the Memo Roc.No.491647/2022/D1-1 dated 07-11-2022 and other consequential proceedings issued by the 3rd Respondent vide Proc.No.G1/193/2022 dated 09-11-2022, through which the building permission obtained by Petitioner herein was revoked/cancelled and directed the District Task force to demolish the construction by taking appropriate permissions without application of mind in a hurried manner and without proper enquiry as illegal, unjust, arbitrary, ultra vires to the provisions of the Telangana Municipalities Act, 2019 and against the principles of natural justice and consequently direct the Respondents not to interfere with the peaceful possession and enjoyment of the Petitioner over house bearing No.1-1-45/1/K/20/22 in Survey No.780 admeasuring 242 Sq.Yrds equivalent to 202.34 Sq.Mtrs situated at Tallagadda, Suryapet town and District bounded by East: 30” Road, West: Land belongs to Sri Gopagani Saidulu, North: Land belongs to Sri Gopagani Saidulu and South: 20” Road and”.

2. Mr. R. Pavan Reddy, learned counsel for the petitioner submits that petitioner is absolute owner and possessor of the house bearing No.1-1-45/1/K/202 in Sy.No.780 admeasuring 242sq.yards equivalent to 202.34sq.mts situated at Tallagadda, Suryapet Town and District, which is purchased by way of a registered sale deed dated 22.10.1998. It is stated that basing on an application filed by the petitioner on 03.08.2022, the respondents herein accorded permission for construction of a house with stilt + 2 upper floors on the schedule property. Petitioner has constructed only two rooms without deviating the rules and regulations under the Municipalities Act. While the things stood thus, on 12.10.2022, the petitioner was shocked to receive a show cause notice dated 10.10.2022 wherein the respondent No.3 directed the petitioner to submit copies of the

documents relating to schedule property and its link documents along with permission letter accorded by the municipality within 7 days. In the said notice, it is mentioned that the respondent No.5 herein gave a complaint wherein she claimed that she has purchased 244sq.yards of site in Sy.No.780/2 from one Sri Kattekola Narasimha Rao in the year 2017 and that she has been in possession of the same from then and alleged that the petitioner's husband obtained house construction permission on petitioner's name for the property which is not existing and with wrong measurements and misusing his official position as ASI. She further stated that the dimensions of her open plot and her neighbour's plot are different and are not tallying and hence, she lodged a complaint initially and that in spite of the same, the respondent municipality accorded permission for construction of house on her open plot. She further claimed that an injunction order was granted on the petitioner's plot.

3. Learned counsel for the petitioner further submits that on 18.10.2022, the petitioner had submitted a detailed reply before the respondent no.3 along with other property documents before him as per notice dated 10.10.2022. Even after submitting the reply, the respondent No.3 did not issue further orders. Hence, the petitioner was under impression that the respondent No.3 might have been satisfied with her reply. All of a sudden on 10.11.2022, the petitioner received another show cause notice dated 17.10.2022 and on observing the references in the said notice, they have not mentioned about the petitioner's reply to the previous show cause notice and served this notice after nearly one month

from the date mentioned therein. The said notice is nothing but, a dire consequential threat to the petitioner. On enquiry, the petitioner came to know that respondent Nos.2 and 3 have passed many orders behind her back and those were also obtained by the petitioner with great difficulty and after going through that, she was shocked and lost hope on the entire system.

4. Learned counsel for the petitioner further submits that on 14.10.2022, the petitioner has received the proceedings dated 09.11.2022 issued by the 3rd respondent in which it was mentioned that the 2nd respondent herein i.e. Special Chief Secretary (M.A & UD) vide memo dated 07.11.2022 instructed the 3rd respondent to revoke the building permission granted to the petitioner and to take enforcement action for demolition of illegal construction on the petitioner's house site. It is submitted that the memo dated 15.10.0222 which is prior to the date of petitioner's reply to the show cause notice dated 10.10.2022 issued by the Joint Director, Municipal Administration, in the said memo, it was directed that RDMA, Hyderabad has to conduct an enquiry and to take enforcement action if the allegations are held proved and to submit action taken report within 3 days. In the said memo, the Joint Director took a further step directing the Municipal Corporation, Suryapet to maintain status quo at the site in dispute.

5. Learned counsel for the petitioner further submits that that the petitioner was not intimated about such memo and hence, she has no knowledge of the contents of the same. By issuing a memo dated

07.11.2022, the 2nd respondent has assumed the role of a civil court and decided the title in favor of respondent No.5 by conducting alleged elaborative enquiry and without giving any notice or opportunity to the petitioner, for the reasons best known to him. The 2nd respondent and the Joint Director of Municipal Administration have acted ultra vires to the provisions of Act upon the vexatious complaints lodged by respondent No.5 herein. He submits that this is a classic example of unjust action of the official respondents to favor the respondent No.5 by violating all the procedure contemplated by law and by encroaching upon the jurisdiction of civil court and by giving go-bye to all the settled procedure.

6. Learned counsel for the petitioner submits that the petitioner had purchased the plot in the year 2017 and moreover, no suit or other proceedings are pending before any court. It is submitted that after completing the construction in the schedule property, the petitioner has locked the rooms and erected the gate as she is staying in Hyderabad. On 11.11.2022, after receipt of the proceedings dated 09.11.2022, the petitioner along with her husband went to Suryapet to see the house on 12.11.2022 and to their utter shock, they could see that the respondents have sealed both the main gate and the main door by covering some paper on the locks by illegally trespassing and encroaching into private property and also affixed some notice on the main door of a room. He submits that no notice was issued to the petitioner. It is submitted that at the behest of the unofficial respondent, the official respondents are acting in a hasty and unruly manner which made the petitioner to come before this court.

7. When this matter came up on 15.11.2022, this court after hearing the arguments of learned counsel for the petitioner has passed the following order:

“ Learned counsel for the petitioner submits that vide proceedings dated 07.11.2022, the Director of Municipal Administration has instructed the Municipal Commissioner, Suryapet to revoke the building permission issued in favour of the petitioner vide letter dated 19.08.2022 under Section 176(9) of the Telangana Municipalities Act, 2019 and take enforcement action for demolition of illegal construction by District Task Force duly consulting the District Collector and AC LB and report compliance.

Learned counsel for the petitioner submits that in view of the order passed by the Director of Municipal Administration, the respondents are trying to demolish the property of the petitioner.

Learned counsel appearing for the unofficial respondent submits that they have given a complaint to the Municipal Commissioner and when the Municipal Commissioner failed to take any action, they have approached the Director of Municipal Administration and he has asked the Regional Director, Municipal Administration to conduct an enquiry and the Regional Director has conducted enquiry and submitted a report and basing on the said report, the Director of Municipal Administration has directed the Municipal Commissioner to revoke the building permission.

The proceedings that are issued by the respondent No.2 dated 07.11.2022 are without jurisdiction, On the face of it, it appears that for extraneous reasons, this order has been passed. The Director of Municipal Administration shall file a counter affidavit before this court and explain how this order has been passed and whenever there is inaction on the part of the Municipal Commissioner, whether the Director of Municipal Administration can conduct the enquiry and when the powers are vested with the Commissioner under Section 176(9) of the Telangana Municipalities Act, 2019, the Director of Municipal Administration can pass this kind of order.

Learned standing counsel for the respondent municipality submits that on the compliant given by the unofficial respondent on 27.09.2022, they have issued a show cause notice to the petitioner on 10.10.2022 and thereafter, both parties appeared before them. He submits that since they are not satisfied with the explanation given by the writ petitioner, they have passed the impugned order dated 09.11.2022.

The memo dated 07.11.2022 issued by the Director of Municipal Administration and the consequential order dated 09.11.2022 passed by the Commissioner, Suryapet are suspended until further orders.

It is needless to mention that when both the memo dated 07.11.2022 and consequential order dated 09.11.2022 are suspended, the respondents have to remove the locks of the premises.

The Director of Municipal Administration shall be present before this court on 23.11.2022 and explain to the court under what authority the memo is issued”.

8. When the matter came up on 23.11.2022, the Director, Municipal Administration was present before this court and on that day, this court has passed the following order:

“Pursuant to the above directions issued by this Court the Director of Municipal Administration is present before this Court. He submits that basing on the Government memo, dated 14.10.2022 he has directed that status quo to be maintained and the said memo is placed before this Court. In the memo subject, is mentioned that "Suryapet Municipality-complaint about misrepresentation of facts to obtain building permission under TSBPASS conducting enquiry regarding". Thereafter, it is mentioned in the references about representation dated 13.10.2022 from D. Rama Devi, Suryapet. The Special Chief Secretary to the Government MA & UD Department has instructed the Director of Municipal Administration to get alleged misrepresentation of facts to get building permission in Suryapet Municipality under the TSBPASS Act to enquire immediately, and R-DMA, Hyderabad, was instructed to maintain the status quo at the site in dispute during the period of enquiry and the enquiry should be completed within the period of 3 weeks and in case there is any misuse of TSBPASS provisions in obtaining building permission in a fraudulent manner is proved right, the constructions so far done shall be treated as unauthorized constructions and shall be demolished as per the Provisions of the Telangana Municipalities Act 2019, it shall be treated as important and a compliance report shall be communicated by 07.11.2022 positively.

When a complaint is given to the higher authorities, at best, the Chief Secretary, MA & UD should have communicated the same to the concerned to take appropriate action. This memo issued by the Special Chief Secretary appears to be in a way he has exercised all the powers of the Commissioner without affording an opportunity to the persons affected, he has straight away instructed to maintain status-quo during the period of enquiry. These kinds of orders from the Chief Secretary are not expected and on the face it, they are contrary to law and against the Principles of the natural justice. When the Chief Secretary directs RDMA to maintain status-quo, the RDMA has no other option, but to follow his orders and RDMA has already gave such directions to the Municipal Commissioner and he has no other alternative but to follow the directions of the higher authorities.

Everyday hundreds of cases come before this Court as well before the respondents and how the Special Chief Secretary has swung into action by-exercising the powers vested with the Commissioner. It is also not known why the Director Municipal Administration was asked to enquire into this case, are there any lapses on the part of the Commissioner?.

The Special Chief Secretary to the Government MA & UD department shall be present before this Court on 28.11.2022”.

9. On 23.11.2022, Special Chief Secretary, M.A. & U.D. was present before this Court. On that day, this Court has passed the following order:-

“

Today, the Special Chief Secretary, Municipal Administration and Urban Development, is present before this Court. He submits that he has received a complaint stating that under the TS-bpass Act , the petitioner has obtained the building permission by suppressing the facts and by playing fraud. There upon to understand the procedural lapses under the TS-bpass Act, particularly in this case, the Special Chief Secretary directed the Director of Municipal Administration to conduct an enquiry and take further steps and apart from that there is no other reason for him except to set right the affairs in the system, when these kind of issues come to his notice, being the Head of the department, it is his duty to look into the same.

The grievance of the petitioner is that the entire process is done behind his back and the unofficial respondent, being an influential person at her behest, the entire machinery has rushed into action and because of this, the petitioner has put to mental agony and lot of prejudice is caused to her. When a complaint is received by the Special Chief Secretary, at best, he would have endorsed the same and sent it to the concerned to take appropriate action. However, he has directed the Director of Municipal Administration to conduct the enquiry and also directed to maintain status quo. Even in the said memo, on what basis he has come to that conclusion, nothing has been stated. When the competent authority is the Municipal Commissioner and if there are any complaints against the Municipal Commissioner, which necessitated the Special Chief Secretary to direct the Director of Municipal Administration to look into it, this Court is not able to understand from the proceedings. Further, the Director of Municipal Administration has conducted enquiry and directed the Municipal Commissioner to revoke the building permission and in a way the Director has exercised power of the Municipal Commissioner under section 176(9) of the Act, which is arbitrary and contrary to the provisions of the Act.

Accordingly, the proceedings dated 07.11.2022 and 09.11.2022 are set aside and the Municipal Commissioner shall issue a fresh show cause notice and shall start the entire process by giving an opportunity of hearing to both the parties. The entire process i.e. show cause notice, reply and personal hearing, shall be

completed by the respondent-Commissioner within a period of six weeks from the date of receipt of a copy of this order.

This Court is having the roster from March onwards has come across several issues of municipality which have to be addressed by the respondents. This Court has appraised the same to the Special Chief Secretary and he shall look into the following aspects by giving a circular/guidelines to the department for effective implementation of the provisions of the act in the larger interest of the people.

- 1) There must be a fixed time frame for disposal of the representations and if the representations are not disposed of as per the time frame the accountability and consequences have to be fixed on the concern.
- 2) Under the TS-bpass Act, with regard to the instant approval, work commencement and the revocation, necessary changes have to be carried in the online application with regard to the nomenclature which is giving rise to litigation i.e. instead of saying it instant approval it is mentioned as instant registration and the revocation as rejection then no prior notice is required.
- 3) Under Section 178, the Municipal Commissioner shall be the part of the enforcement team. Whereas under the TS-bpass Act, as far as the GHMC is concerned, Municipal Commissioner is the member of the task force team. As far as the Municipalities are concerned, the Municipal Commissioner is not a part of the task force team, consequently Commissioner has no control on the affairs and the same is contrary to the Act. Steps shall be taken to include the Municipal Commissioner in the Task Force team
- 4) In the light of series of orders passed by this Court, while granting permission, the respondents can only look at the existing master plan but not the draft master plan.
- 5) Whenever, a final order is passed, the respondents shall give reasonable time i.e. 15 days and in case of a show cause notice, a reasonable time of 7 days shall be given.
- 6) Under Section 179, there should be a Town Planning Building Tribunal which is not constituted by the state and the necessary steps shall be taken to constitute the Tribunal.
- 7) Municipal Commissioners are insisting for ULC or the No Objection Certificate from some departments while granting permission. In view of the law laid down by the Hon'ble Apex Court in Hyderabad Potteries case, while granting building permission, respondents can only look at the prima facie title and the legal possession apart from that they cannot insist for any other document. It is needless to say that as far as the constructions near the water bodies, FTL or the buffer zones are concerned, respondents can always insist for the same.

8) With regard to the pending cases and pursuing of the cases before the Trial Court, the Special Chief Secretary shall look into this aspect and how many cases are pending before the Trial Court and in how many cases, the counters or the vacate petitions are filed on behalf of the Municipality and appropriate directions shall be initiated.

9) There should be a strict circular to all the Officers in the State that the demolitions cannot be taken up at any cost during night time and on holidays as per the directions of the Hon'ble Apex Court and this Court

10) Orders shall not be passed without issuing notice and without following principles of natural justice.

11) If there are any violations of the circular instructions given by the Special Chief Secretary, what are the consequences to be followed shall also be mentioned in the circular.

12) As per the Municipalities Act or the GHMC Act, neither the Government nor the Municipality has no authority to extend the lease beyond three years or the period that is specified in the agreement. Hence, the respondents shall take appropriate action to conduct auction in respect of the shops/buildings belonging to the local authorities in the entire state immediately after expiry of the lease period.

13) The respondents are not able to find out the difference between the notice and an order. While passing orders and issuing notices there should be a distinction between the two.

14) Under Section 450 of the GHMC Act or under Section 176(9) of the Municipalities Act, whenever, a building permission is obtained by suppression or misrepresentation of facts, the respondents can cancel/revoke the building permission. Now the entire system is through online and as the said application do not contain a column with regard to the pending cases under Section 450 and 176(9) several cases are coming up before this Court and the Commissioners. The respondents shall take steps to include a column mentioning about pending cases in the online application so that the litigations under Section 176(9) as well under Section 450 can be minimized.

15) The Trade licenses are granted without verifying the documents terming it as provisional license which is having worst consequences. Hence it also requires attention.

This Court expects that the Special Chief Secretary will attend to all these issues and come up with solutions in the larger interest of people

Post on 12.12.2022. By that time a report shall be placed before this Court by the Special Chief Secretary on the steps that are going to be implemented.

Registrar Judicial shall communicate the copy of this order to the Special Chief Secretary, MA & UD forthwith”.

10. In the light of the discussion in the above paragraphs, the memo dated 07.11.2022 and the consequential order dated 09.11.2022 are set aside by this Court on 30.11.2022 and the Municipal Commissioner was directed issue a fresh show cause notice and to start the entire process by giving an opportunity of hearing to both the parties and the entire process i.e. show cause notice, reply and personal hearing shall be completed by the Commissioner within a period of six weeks from the date of receipt of copy of the order and on that day, this court has also issued several directions and directed the Special Chief Secretary, MA and UD to file a compliance report on the directions issued by this court dated 30.11.2022.

11. Thereafter, the respondents have filed a counter affidavit, wherein, they have placed before this court the steps taken by them with regard to each of the direction passed by this court and also placed certain memos issued by them which are extracted below:

GOVERNMENT OF TELANGANA
MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPARTMENT

Letter. No.7774/Plg.III/2022

Dated.08.12.2022

From
Special Chief Secretary to Government,
Municipal Administration & Urban Development Department,
Telangana Secretariat.

To
CEO,
TSbPASS, Hyderabad ,

Sir

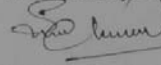
Sub: MA & UD Dept., - Hon'ble High Court orders dt. 30.11.2022 in
WP.No.41702 of 2022- Regarding.

Ref: Hon'ble High Court orders dt. 30.11.2022 in WP.No.41702 of 2022

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1. Your attention is invited to the references cited.
2. In this regard it is informed that Hon'ble High Court in their order dt 30.11.2022 in WP.No.41702 of 2022 among other things have directed that:
 - (1) Under the TS-bPASS Act, with regard to the instant approval, work commencement and the revocation, necessary changes have to be carried in the online application with regard to the nomenclature which is giving rise to litigation i.e. instead of saying it instant approval it is mentioned as instant registration and the revocation as rejection then no prior notice is required "
 - (2) Under Section 450 of Greater Hyderabad Municipal Corporation Act or under Section 176 (9) of the Municipalities whenever a building permission is obtained by suppression or misrepresentation of facts, the respondents can cancel/revoke the building permission. Now the entire system is through online and as the said application do not contain a column with regard to the pending cases under Section 450 and 176(9) several cases are coming up before this Court and the Commissioners. The respondents shall take steps to include a column mentioning about pending cases in the online application so that the litigations under Section 176(9) as well under Section 450 can be minimized.
3. In view of the above you are directed to make necessary changes in the TSbPASS online application software to address the above issues mentioned by the Hon'ble High Court in their order dt.30.11.2022. The necessary mechanism shall be in place in a couple of weeks. ☐ ☐
4. This shall be treated as Most Urgent

Yours faithfully



For Special Chief Secretary to Government

SR

GOVERNMENT OF TELANGANA
MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPARTMENT

Memo No.7773/Plg.III/2022

Dated.08.12.2022

Sub: MA & UD Dept., - Hon'ble High Court orders dt. 30.11.2022 in WP.No.41702 of 2022- Regarding.

Ref: Hon'ble High Court orders dt. 30.11.2022 in WP.No.41702 of 2022

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1. The attention of Director of Municipal Administration, Hyderabad / Commissioner Greater Hyderabad Municipal Corporation is invited to the references cited.

2. They are informed that Hon'ble High Court in their order dt 30.11.2022 in WP.No.41702 of 2022 (copy enclosed) among other things have directed that :

(1) With regard to the pending cases and pursuing of the cases before the Trial Court, the Special Chief Secretary shall look into this aspect and how many cases are pending before the Trial Court and in how many cases, the counters or the vacate petitions are filed on behalf of the Municipality and appropriate directions shall be initiated.

(2) As per the Municipalities Act or the GHMC Act, neither the Government nor the Municipality has no authority to extend the lease beyond three years or the period that is specified in the agreement. Hence, the respondents shall take appropriate action to conduct auction in respect of the shops/buildings belonging to the local authorities in the entire State immediately after expiry of the lease period.

(3) The Trade licenses are granted without verifying the documents terming it as provisional license which is having worst consequences. Hence it also requires attention.

3. In view of the above Director of Municipal Administration, Hyderabad / Commissioner Greater Hyderabad Municipal Corporation are requested to submit the following information to take further action in this matter.

(1) Number of cases pending before the Trial Court (Municipality wise) and in how many cases, the counters or the vacate petitions are filed on behalf of the Municipality/ Corporation.

(2) List of shops/buildings belonging to Municipality / Municipal Corporation in the entire State where the lease period is expired.

(3) Remarks on "Trade licenses are granted without verifying the documents terming it as provisional license which is having worst consequences".

4. This shall be treated as Most Urgent and information shall be furnished immediately.

ARVIND KUMAR
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To,
The Director of Municipal Administration,
Hyderabad.
Commissioner, Greater Hyderabad Municipal Corporation, Hyderabad
All Municipal Commissioner of Municipal Corporations / Municipalities
(Through DMA, Hyderabad).

//FORWARDED ::BY:: ORDER//

SECTION OFFICER

**GOVERNMENT OF TELANGANA
MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPARTMENT**

Memo No.7773/Plg.III/2022

Dated. 08.12.2022

Sub: MA & UD Dept., - Hon'ble High Court orders in WP.No.41702 of 2022 regarding disposing of representation by the authorities Instructions - Issued - Regarding.

- Ref: 1. Orders dt.27.07.2006 of Hon'ble High Court in W.P.No. 20000 of 2006
2. G.O.Ms.No.565, MA, Dt.04.11.2006.
3. Orders of the Hon'ble High court Dt.15.03.2022 in WP.No.13378 of 2022.
4. From GP for MA&UD High Court Ir WP No 13378 of 2022/SBG/MA&UD/Hc, Dated: 31.05.2022.
5. Govt., Memo No.7773/Plg.III/2022, Dt.15.07.2022.
6. Hon'ble High Court orders dt.30.11.2022 in WP.No.41702 of 2022

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The attention of Commissioners of all Municipal Corporations / Municipalities is invited to the subject & references cited.

2. In the reference 6th cited (copy enclosed) in pursuance of the orders passed by the Hon'ble High Court in W.P.No.13378 of 2022, instructions were issued to Commissioners all Municipal Corporations / Municipalities in the State to dispose all representations within 15 days from the date receipt of such representations duly following the guidelines issued by the Hon'ble High Court.

3. The Hon'ble High Court in their order dt 30.11.2022 in WP.No.41702 of 2022 among other things have directed that "there must be a fixed time frame for disposal of the representations and if the representations are not disposed of as per the time frame the accountability and consequences have to be fixed on the concerned. ".

4. In pursuance of above orders of Hon'ble High Court, the Commissioners of all Municipal Corporations / Municipalities are hereby directed that they shall dispose the representations within 15 days from the date of receipt of such representations duly following the guidelines issued by the Hon'ble High Court in W.P.No.20000 of 2006 dt.27.06.2006 and WP.No.41702 of 2022. Any negligence in this matter will be viewed seriously and severe disciplinary action will be initiated on the concerned for their negligence.

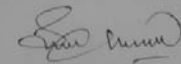
5. The Director of Municipal Administration is directed to review the disposal of representations on monthly basis & shall send monthly reports to Government.

**ARVIND KUMAR
SPECIAL CHIEF SECRETARY TO GOVERNMENT**

To,
The Director of Municipal Administration,
Hyderabad.
Commissioner, Greater Hyderabad Municipal Corporation

All Municipal Commissioner of Municipal Corporations / Municipalities
(Through DMA, Hyderabad).

//FORWARDED ::BY:: ORDER//


SECTION OFFICER

GOVERNMENT OF TELANGANA
MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPARTMENT

Memo. No.7773/Plq.III/2022

Dated.08.12.2022

Sub: MA & UD Dept., - Hon'ble High Court orders in WP.No.41702 of 2022 -
Reg.

Ref: Orders dt.30.11.2022 of Hon'ble High Court in WP No.41702 of 2022
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1. The Hon'ble High Court in their order dt 30.11.2022 in WP.No.41702 of 2022 among other things have directed that :

- (1) whenever, a final order is passed, the respondents shall give reasonable time i.e. 15 days and in case of a show cause notice, a reasonable time of 7 days shall be given.
- (2) Orders shall not be passed without issuing notice and without following principles of natural justice.
- (3) The respondents are not able to find out the difference between the notice and an order. While passing orders and issuing notices there should be a distinction between the two.

2. In pursuance of above orders of Hon'ble High Court, the Commissioners of all Municipal Corporations / Municipalities are hereby directed that :

- (1) they shall strictly follow the time lines prescribed by the Hon'ble High Court viz., while passing any final order they should give 15 days time and 7 days in case of a show cause notice.
- (2) Before passing any orders they should give notice to the affected parties and shall follow the timelines prescribed above viz., 7 days in case of a show cause notice and 15 days in case of final orders.
- (3) There should be clear distinction between the notice and final order viz., in notice they should clearly mention the cause of action for issue notice and under what provisions of law notice is being issued and what points the receiver of notice shall submit their reply. Similarly while passing final orders they should clearly mention the reasons for passing such final orders.

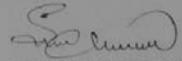
The Director of Municipal Administration shall prepare the standard formats for issue of notice and final orders in various cases and communicate the same to the Municipal Corporations for compliance.

3. The above instructions shall be followed scrupulously and any violation in this matter will be viewed seriously and severe disciplinary action will be initiated on the concerned for their negligence..

ARVIND KUMAR
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To,
The Director of Municipal Administration,
Hyderabad.
Commissioner, Greater Hyderabad Municipal Corporation
All Municipal Commissioner of Municipal Corporations / Municipalities
(Through DMA, Hyderabad).

//FORWARDED ::BY:: ORDER//


SECTION OFFICER

GOVERNMENT OF TELANGANA
MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPARTMENT
Memo. No.7775/Plg.III/2022 Dated.08.12.2022

Sub: MA & UD Dept., - Hon'ble High Court orders in WP.No.41702 of 2022
- Regarding.

- Ref: 1. Orders Dt:28-03-2022 passed by Hon'ble High Court in W.P. No. 23611 of 2021 & 15787 of 2022
2. From GP for MA&UD. High Court. Lr.WP.No.W.P. No. 23611 of 2021 & 15787 of 2022/SBG/MA&UD/HC, Dated: 31.05.2022.
3. Memo. No.7775/Plg.III/2022 Dated.23.07.2022
4. Hon'ble High Court orders Dt.30.11.2022 in WP.No.41702 of 2022

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1. The attention of Commissioners of all Municipal Corporations / Municipalities is invited to the subject & references.

2. In the reference 1st cited, the Hon'ble High Court in their order Dt:28-03-2022, in W.P. No. 23611 of 2021 & 15787 of 2022 have stated that the Hon'ble Apex Court in Civil Appeal No.7626 and 7627 of 2019 (Municipal Corporation of Greater Mumbai and others Vs M/s Sunbeam High Tech Developers Pvt., Ltd.) have laid several guidelines to the Municipality as to when, where and how they can carry demolition. The Hon'ble High Court has directed the Government to communicate the said orders passed by the Hon'ble Apex Court to all concerned in the State for compliance.

3. In pursuance of the above, orders passed by Hon'ble Apex Court in Civil Appeal No.7626 and 7627 of 2019 (Municipal Corporation of Greater Mumbai and others Vs. M/s Sunbeam High Tech Developers Pvt. Ltd.) and the orders passed by Hon'ble High Court in their order Dt:28-03-2022, in W.P. No. 23611 of 2021 & 15787 of 2022 were communicated in the reference 3rd cited for compliance of same.

4. The Hon'ble High Court in their order dt 30.11.2022 in WP.No.41702 of 2022 among other things have directed that "there should be a strict circular to all the Officers in the State that the demolitions cannot be taken up at any cost during night time and on holidays as per the directions of the Hon'ble Apex Court and this Court"

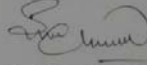
5. The above orders of Hon'ble High Court are communicated herewith and Commissioners of all Municipalities / Municipalities are hereby directed that demolitions shall not be taken up at any cost during night time and on holidays and while taking up any demolition they shall follow the guidelines issued by Hon'ble Apex Court in Civil Appeal No.7626 and 7627 of 2019 and the orders passed by Hon'ble High Court in their order Dt:28-03-2022, in W.P. No. 23611 of 2021 & 15787 of 2022 and order dt 30.11.2022 in WP.No.41702 of 2022.

6. The above instructions shall be followed scrupulously and any violation in this matter will be viewed seriously and severe disciplinary action will be initiated on the concerned for their negligence.

ARVIND KUMAR
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To,
The Commissioner,
Greater Hyderabad Municipal Corporation, Hyderabad.
The Director of Municipal Administration
All Municipal Commissioners of Municipal Corporations / Municipalities
(through DMA, Hyderabad).

//FORWARDED ::BY:: ORDER//


SECTION OFFICER

GOVERNMENT OF TELANGANA
MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPARTMENT

Memo. No.15963/Plg.III/2022

Dated: 08.12.2022

Sub: MA & UD Dept., - Hon'ble High Court orders in WP. No.39362 of 2022
- Instructions - Regarding.

- Ref: 1. Orders Dt.19-04-2022 passed by Hon'ble High Court in Writ Petition No.19194 of 2022.
2. From GP for MA&UD High Court Lr.WP.No.19194 of 2022 /SBG/MA&UD/HC, Dated: 31.05.2022.
3. Govt., Memo. No.7776/Plg.III/2022, Dated.23.07.2022.
4. From Sri S Srinivas Reddy, Registrar (Judicial-I), Lr.dt.09.11.2022, Communicated the orders of Hon'ble High Court order in W.P.No.39362 of 2022
5. Govt, Memo. No.15963/Plg.III/2022 Dated: 15.11.2022
6. Orders Dt.30.11.2022 of Hon'ble High Court orders in WP. No.39362 of 2022

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1 The attention of Commissioners of all Municipal Corporations / Municipalities and VCs of all UDAs is invited to the references cited above (copies enclosed).

2. In the reference 1st cited, the Hon'ble High Court in their order Dt.19-04-2022 in Writ Petition No.19194 of 2022 have observed that the Municipal Corporations / Municipalities are (i) insisting NOC from District Collectors in spite of the orders passed by the High court in Hyderabad Potteries Pvt., Ltd., Vs Collector, Hyderabad District and (ii) passing revocation orders without issuing show cause notice to the affected parties. The Hon'ble High court has directed the Government to issue suitable directions to all concerned in this regard.

3. In pursuance of the above orders passed by Hon'ble High Court, following instructions were issued in the reference 3rd cited to Commissioners of all Municipal Corporations / Municipalities / VCs of all UDAs.

1. NOC from the District Collectors shall not be insisted in normal cases except in exceptional cases where a particular sites is part of a Sy.No / parcel of land which is recorded as Government land / land of its authorities in revenue records and where the Government interest is involved.

2. Revocation orders shall not be passed without issuing notice to the affected parties.

4. However, the Hon'ble High Court in Writ Petition No. 39362 of 2022 has observed that in spite of the above orders, some of the Municipal Commissioners are revoking building permissions without issuing notice to the effected parties and viewed it very seriously and also directed in their order dt.26.10.2022 to follow the guidelines / directions issued by the Hon'ble High Court in W.P.No.20398 of 2021 and batch dt.13.12.2021 and pass orders in accordance with law. Therefore, while communicating the said orders passed by the Hon'ble High Court, the Commissioners of all Municipal Corporations / Municipalities and VCs of all UDAs were directed to the comply the above orders and they were informed that any violation in this aspect from henceforth will be viewed seriously and they will be made liable for all costs and consequences that may arise on account of such violations, in their personal capacity.

5 The Hon'ble High Court in their order dt 30.11.2022 in WP.No.41702 of 2022 among other things have directed that:

"Municipal Commissioners are insisting for ULC or the Not Objection Certificate from some departments while granting permission. In view of the law laid down by the Hon'ble Apex Court in Hyderabad Potteries case, while granting building permission, respondents can only look at the prima facie title and the legal

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possession apart from that they cannot insist for any other document. It is needless to say that as far as the constructions near the water bodies, FTL or the buffer zones are concerned, respondents can always insist for the same".

6. The orders passed by Hon'ble High Court in their order dt 30.11.2022 in WP.No.41702 of 2022 communicated herewith for strict compliance and the earlier instructions issued by the Government referred above are reiterated once again and Commissioners of all Municipal Corporations / Municipalities and VCs of all UDAs shall also follow the same without any deviation.

7. The above instructions shall be followed scrupulously and any violation in this matter will be viewed seriously and severe disciplinary action will be initiated on the concerned for their negligence

ARVIND KUMAR
SPECIAL CHIEF SECRETARY TO GOVERNMENT

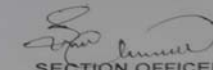
To,

The Commissioner,
Greater Hyderabad Municipal Corporation,
Hyderabad.

The Director of Municipal Administration, Hyderabad

All Municipal Commissioners of Municipal Corporations / Municipalities
(through DMA, Hyderabad).

//FORWARDED ::BY:: ORDER//


SECTION OFFICER
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12. The first direction of this Court is to fix a time-frame for disposal of representation given to the municipality. It is submitted by the learned Government Pleader that earlier, they have issued memo dated 15.07.2022 directing all the Municipal Commissioners to dispose of the representations within 15 days and they have reiterated the same again by issuing another memo on 08.12.2022. It is directed that whenever the representations are not disposed of within the time-frame by the officer

concerned and it is brought to the notice of the higher authorities they shall initiate appropriate action.

13. This Court had issued the 2nd direction asking the respondents to look into the functioning of *on line* portal, the words used work commencement and the revocation which are causing unnecessary problems. In that regard, it is submitted that they have already taken necessary steps and within a period of two weeks, they will complete the said process. The respondents shall complete the process within a period of two weeks.

14. The 3rd direction is in respect of District Task Force team, where except Commissioner of GHMC, other Commissioners are not part of it. It is submitted that under the TS-bPASS rules, in the District Level TS-bPASS Committee, the Municipal Commissioner is a member and the same District Level TS-bPASS Committee will act as District Task Force in which Municipal Commissioner is a member and however, as per the orders passed by this court, they have issued necessary instructions to all the Municipal Commissioners on the issue.

15. This court has observed that in several cases whenever the encroachment is not removed, it is submitted by the learned standing counsel that they have addressed a letter to the Task Force Team. On a specific query, it is submitted that the Municipal Commissioner is not part of the Task Force Team. In that regard, this court has directed the respondent to clarify. The respondents shall issue necessary instructions

in this regard afresh to all the Municipal Commissioners within a period of two weeks from the date of receipt of a copy of the order.

16. The 4th direction that was issued by this court, this court in several cases has observed that the building applications were rejected considering the draft master plan. The Division Bench of this court has held that the respondents can only look at the existing master plan and that judgment has attained finality. In spite of that, when the respondents are rejecting the building application on the very same ground, this court has directed the respondents to pass appropriate directions, so that inconvenience is not caused to larger public. It is stated in the counter that whenever the draft master plan has been notified for public objections and suggestions and same have been received and considered by the local body/UDA and final master plan is sent to Government for approval, in those cases, it is appropriate to follow the draft master plan otherwise in the interregnum period, developments on the land will be against the master plan provisions, thereby the very purpose of preparation of master plan will get defeated and hence requested this Court to consider and pass appropriate orders. This court cannot pass such direction as the Division Bench of this court has already affirmed the orders passed by the learned single judge of this court that while granting permission, the respondents have to look at the existing master plan. If the draft master plan is pending consideration before the Government for years together and still, the respondents consider the draft master plan, it would cause injustice to the affected parties. As such, it is the responsibility of the Government that

once the objections are received and when it is placed before the Government, they have to take appropriate action on the said draft master plan. In case, the said draft master plan is pending approval, the government shall issue directions to all the municipalities that while granting permission, they can look at the existing master plan, but not draft master plan. The respondents shall issue necessary instructions in this regard afresh to all the Municipal Commissioners within two weeks from the date of receipt of a copy of this order.

17. The 5th direction is whenever the final orders are passed the respondents shall give minimum 15 days time. It is submitted by the learned Government Pleader that they have issued a memo to all officers to give seven days time while issuing show cause notice to the affected parties. While passing final orders, 15 days time shall be given to the affected party to avail the appropriate legal remedies available to them. Whenever the officers fail to give sufficient time as per the memo, appropriate action shall be initiated against the officer concerned.

18. The 6th direction was constituting the Tribunal under Section 179 of the Telangana Municipalities Act, 2019, it is submitted by the learned Government Pleader in the counter affidavit that on the request made by the State Government, High Court was pleased to nominate names of 3 retired District Judges for appointment of Chairman to Town Planning Building Tribunal and the proposal for appointment of Chairman to Town Planning Building Tribunal is under active consideration of the Government and the same will be expedited. When the Act itself

contemplates, it is unfortunate that so far no Tribunal is constituted by the Government. As such, the respondents shall constitute a Tribunal as expeditiously as possible, but not later than six months from the date of receipt of a copy of this order.

19. The 7th direction that was issued by this court is with regard to insisting for 'No Objection Certificate' from the ULC or other departments for granting permission, when several writ petitions have come up stating that the respondents are asking for No objection from different departments for grant of building permission, this Court considering the law laid down in ***Hyderabad Potteries Private Limited v. Collector, Hyderabad District***¹, has held that the respondents cannot insist for no objection certificate from any authorities and while granting permission, they can only look at the prima facie title and possession of the parties. When it comes to the water bodies or the FTL or buffer zones, the respondents can always insist for no objection. In this regard, it is submitted by the learned Government Pleader that they have already issued memos to all the Commissioners/VCs of all UDAs not to insist for NOC from the District Collectors except in exceptional cases and same instructions are reiterated in Government Memo dated 08.12.2022. In the said memo they have stated that NOC shall not be insisted in normal cases except in exceptional cases and revocation orders shall not be passed without issuing notice to the affected parties. In the light of the law laid down in Hyderabad Potteries case (referred to supra) the

¹ 2001 (3) ALD 600

respondents cannot insist for No Objection in any case except in cases of water bodies, FTL, buffer zones.

20. The 8th direction that was issued by this court is to submit a report on the cases pending before the trial courts, it is submitted by the learned Assistant Government Pleader that they require three weeks time. Whenever a notice is issued by the respondents on the illegal structures they are approaching the Courts below. The lower Courts are issuing the notices to the counsel for Municipalities. When there is no response from them, the Courts are passing injunction / status quo orders. The respondents are not showing any interest to vacate the said orders and parties are suffering in view of the lapses on the part of the respondents. The 1st respondent shall issue necessary instructions in this regard afresh to all the Municipal Commissioners within a period of two weeks from the date of receipt of a copy of this order.

21. The 9th direction that was issued by this court is not to carry out demolitions in the night time and on holidays. It is submitted that they have given a memo to all the officers, wherein it is instructed that demolitions shall not be taken up at any cost during night time and on holidays. Any deviation in this regard shall be followed by some stringent action against the concerned.

22. The 10th direction is compliance of principles of natural justice before taking any action and passing order. It is submitted that a memo was issued by the respondents that any order or orders including the revocation orders shall not be passed without issuing notice and without

following principles of natural justice. Strict compliance of the memo shall be ensured by the higher authorities.

23. The 11th direction was what are the consequences to be followed if the memos are not implemented. Learned Government Pleader submits that while issuing instructions in all the memos, they have mentioned that any violation will be viewed seriously and the concerned Municipal Commissioner will be personally made responsible for all costs and consequences that may arise on account of such violations.

24. The 12th direction that was issued is about the lease periods where the auctions are not conducted and the lessee being in possession beyond the lease period. It is submitted that the details were submitted by the Director of Municipal Administration and Commissioner, GHMC and further action will be taken as per the orders passed by this court. The respondents shall initiate appropriate action as per the Rules within a period of eight weeks from the date of receipt of a copy of this order.

25. The 13th direction that was issued observing that in all the orders that are passed by the municipalities, they are not able to understand the distinction between a notice, show cause notice, order and a speaking order, it is submitted by the learned Government Pleader that they have issued instructions to all the Municipal Commissioners, while passing orders, to make distinction between a notice and an order.

26. The 14th direction is majority of litigation with the municipality and before this court are about cancellation of permissions on suppression

or misrepresentation of facts. The application in the *on line* format or *off line* format, do not contain a column with regard to the pending cases, applications are being filed under Section 450 of the Act before the Commissioner seeking cancellation of permission. Then this court has directed the respondents to incorporate a column in the said *on line* application. In this regard, it is submitted by the learned Government Pleader that necessary instructions have been issued to the CEO TSbPASS vide memo dated 08.12.2022 to make necessary provisions in the TSbPASS online application software to address the issues mentioned by this court by order dated 30.11.2022 and necessary changes will be in place in couple of days. The respondents shall take appropriate steps within a period of eight weeks from the date of receipt of a copy of this order.

27. The 15th direction that was issued by this court i.e. the Trade licenses granted without verifying the documents, it is submitted that the details have been called from the Director of Municipal Administration and Commissioner, GHMC and further action will be taken. Further action shall be taken within 15 days from the date of receipt of a copy of this order

28. It is further submitted by the learned Government Pleader that the report containing the above said details is an interim report and some more time of two weeks may be granted to submit the final report. This court so far has granted more than six months time. This court was holding the municipal roaster for a period of nine months and majority

cases are filed seeking the relief to dispose of their representations. This court is not able to understand why the respondents who are bound to consider the representations do not consider the same and when the matter comes up before this court, learned standing counsel representing them submits that they will consider the representations. In Writ Petitions of this nature, there is no process of adjudication that is involved. When it is mandatory duty and obligation of the respondents to consider the representations, because of the lapses on their part, unnecessarily, the parties are made to rush to this court. The common man should not be made to run to the courts because of some inaction or the over-action on the part of the officer. When he is made to come to the court, the officer concerned shall bear the costs. Unless such accountability is fixed, there won't be any change in the attitude of the officers, the courts will be burdened with the litigation and the common man is as well put to lot of hardship.

29. The constitutional courts are required to adjudicate the complicated questions of law and safeguard the fundamental rights of the citizens. But unfortunately the courts are having very less time to decide the pending issues on complicated questions of law but the courts are busy in directing the officers to dispose of the representations asking the officers to do things which they are obligated to do so.

30. Accountability is a *sine qua non* for any democratic system. The makers of our constitution made sure that each arm of power could be held accountable for its actions. It is the duty of the court to ensure that

the executive becomes alive to perform its duties. The courts have the power to keep the administrative acts within the limits of law. When an officer is bound to do a particular act and when he is not doing it, the higher authorities have a responsibility to monitor how the officers are working.

31. Finally, basing on the orders passed by this court, the Government has issued memos. If the officer fails to dispose of the representation or follow any of the memos issued by the government, it is a clear violation of the orders of the court and also the memos issued by the higher authorities.

32. In view of the memos issued by the Special Chief Secretary to Government, Municipal Administration and Urban Development Department, the officers shall adhere to the said memos and discharge their duties.

33. Accordingly, the Writ Petition is disposed of. Registrar (Judicial) is directed to communicate a copy of this order to 1) The Chief Secretary, Government of Telangana and 2) The Special Chief Secretary, Municipal Administration & Urban Development who in turn shall communicate this order to all the Commissioners in the State of Telangana. There shall be no order as to costs.

34. The Miscellaneous Applications, if any shall stand automatically closed.

LALITHA KANNEGANTI, J

24th January, 2023

gv1 / ksld