

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.4161 OF 2011

ORDER

This writ petition is filed for a *writ of mandamus* declaring the action of the 1st respondent in not taking any action against the unauthorised construction made by the respondents 2 and 3 in spite of the notices dated 03.01.2011 and 06.01.2011 vide U.C.R.No.9/TP/2010-2011 given by the 1st respondent Municipality, as illegal, arbitrary and contrary to the provisions of A.P. Municipalities Act, 1965 (for short 'the Act')

The case of the petitioner is that he made a representation dated 01.02.2011 to the 1st respondent-Municipality in respect of unauthorised constructions made by the respondents 2 and 3. In pursuance to the same, the 1st respondent issued notice dated 03.01.2011 to the respondents 2 and 3 under Section 228(1) and (2) of the Act asking them to stop construction of the house and remove the unauthorised construction within 3 days. When the respondents 2 and 3 have not taken any steps to remove the unauthorised constructions, the 1st respondent issued final notice dated 06.01.2011 under Section 340 of the Act asking the respondent 2 and 3 to remove the unauthorised constructions within 3 days otherwise the Municipality will take the necessary action to remove the same. In spite of the same, the respondents 2 and 3 have proceeded with the construction. As no action has been taken by the 1st respondent, the present writ petition is filed.

Counter affidavit is filed by the 1st respondent stating that the respondents 2 and 3 have jointly submitted building construction plans before the 1st respondent on 09.12.2010 duly proposing to construct ground and first floor building at premises of H.No.3-1-220 situated at market area, Metpally. But the permission as sought by the

respondents 2 and 3 could not be issued as the plans submitted by them are not as per building Rules. It is stated that much before the objection petition filed by the petitioner on 01.02.2011, the petitioner made oral complaint against the respondents 2 and 3 and the then Commissioner inspected the premises and issued provisional notice under Section 228(1) and (2) of the Act on 03.01.2011 asking them to stop construction and later issued final notice under Section 340 of the Act. In pursuance to the objection petition filed by the petitioner, the 1st respondent has not considered the application made by the respondents 2 and 3 for construction permission.

Counter affidavit is filed by the 2nd respondent stating that he along with 3rd respondent inherited the house No.3-1-220 to an extent of 160 sq.yards situated at Market area, Metpally, Karimnagar District and as it is old house, they have dismantled the said house and made an application to the 1st respondent seeking permission for construction of new building. But the 1st respondent failed to accord permission. Thereafter, the 2nd and 3rd respondents divided the said house site into two equal parts (i.e., 80 sq.yards, each) and approached the 1st respondent seeking permission for construction, but it was informed that no permission is required for construction of house in 80sq.yards as per the GO's. Accordingly, the 2nd respondent constructed the house consisting of ground + 2 floors in 80 sq.yards after leaving the required set backs. It is also stated that the petitioner and respondents 2 and 3 are neighbours and there are disputes between them regarding the encroachment of open area left out between them. He further states that the petitioner instead of agitating his rights before the Civil Court approached this Court through 1st respondent. It is further stated that the 2nd respondent has no knowledge about the information given by the petitioner to the 1st respondent and also about the notices dated 03.01.2011 and 06.01.2011 issued by the 1st respondent and sought for

dismissal of the writ petition.

Counter affidavit is filed by the 3rd respondent stating that the 2nd respondent is his brother and that they have divided the said houses into two equal parts i.e., 80sq.yards each and that he has constructed the house in accordance with the plan submitted to the Metpally Municipality. It is also stated that petitioner has to approach the Civil Court to agitate his rights. It is denied in the counter that at the time of dismantling the old house, the 3rd respondent has removed the boundary wall without the consent of the petitioner and in that process, the petitioner's bathroom was removed and caused heavy loss. It is also denied that he has constructed the window in the 1st floor from which the petitioner's hall is visible. He also stated that he has no knowledge about the issuance of notice dated 03.01.2011 and final notice dated 06.01.2011 issued by the 1st respondent and sought for dismissal of the writ petition.

Learned counsel for the petitioner states that neither provisional order nor final order, and not even a notice is served on the petitioner.

Heard the learned counsel for the 2nd respondent and learned counsel for the 3rd respondent.

Learned counsel for the 3rd respondent states that the 3rd respondent has passed away and that the respondents 4 and 5 are impleaded as LR's of the 3rd respondent and further states that the writ petition is not maintainable stating that petitioner has to approach the Civil Court in respect of his grievance.

In this case, the 1st respondent filed counter stating that even before the petitioner made a complaint, the notice was issued to the respondents 2 and 3 under Section 228(1) and (2) of the Act but the same is denied by the respondents 2 and 3. Any how since the 3rd respondent passed away, again the notice has to be issued to the

respondents 4 and 5. Since the 2nd respondent also denied the receipt of notices, this Court in the writ petition cannot decide about the violations committed by the respondents and whether the petitioner's representation is true or not. It is for the 1st respondent to consider the representation of the petitioner and take action. Since it is stated that respondent 3 has passed away, the 1st respondent shall issue notices to respondents 2, 4 and 5 once again within a period of four (4) weeks from the date of receipt of receipt of copy of this order. After issuance of notice, it is open for the respondents 2, 4 and 5 to file explanation to the same. On such explanation being filed, it is for the 1st respondent to take appropriate action in accordance with law.

With the above direction, the writ petition is disposed of. There shall be no order as to costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER

REDDY,J

Date: 30.06.2015

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