HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.40400 of 2015

Date:14.12.2015

Between:
Viswanadha Poultries, Pulagalipalem,
reptd by its Managing Partner-
R.V.V.Satyanarayana, S/o Veera Raju
and five others.

..... Petitioners

And:
The State of A.P., reptd., by its
Principal Secretary, Municipal Admn.,
& Urban Development Department,
Hyderabad and another.

.....Respondents

Counsel for the Petitioners: Mr. Subba Rao Korrapati

Counsel for Respondent No.1: GP for Municipal Admn. (AP)

The Court made the following:
ORDER:

This Writ Petition is filed for a *Mandamus* to declare Condition No.4 of the building permit, vide BA.No.15527/2014/ DCP-1/G1, Town Planning Section, dated 02.6.2015, of respondent No.2, as illegal and arbitrary.

The petitioners have applied for building permission for construction of Cellar for Parking + Ground + five upper floors for residential use in the land situated in Survey No.112/1, 2 of Saradanagar, Chinamushidiwada

Village, Pendurthy Mandal, Visakhapatnam District. Vide proceedings, dated 02.6.2015, referred to above, respondent No.2 has accorded the building permission to the petitioners with certain conditions, which include Condition No.4, which reads as under:

> "The applicant shall furnish land conversion certificate (NALA) issued by Revenue Department."

The petitioners further pleaded that the land in respect of which the building permission was granted is a part of the land which was earlier used for poultry purposes and therefore, it is exempted from the provisions of Section-7(f) of the Andhra Pradesh Agricultural Land (Conversion for non-agricultural purposes) Act, 2006 (for short 'the Act').

It is not the pleaded case of the petitioners that they have approached the competent authority under the Act and got a certificate to the effect that the land over which the building is proposed to be constructed was being used for poultry purposes; and that along with the application for building permission, they have obtained an exemption certificate from the competent authority.

Though the Act exempts such lands, the fact whether the said land was, in fact, earlier used for poultry purposes or not, can be ascertained only based on a certificate issued by the competent authority under the Act.

As regards the impugned notice issued by respondent No.2, I do not find any illegality in its stipulating Condition No.4 as, it is incumbent upon the owner of every land which was not otherwise a non-agricultural land to get the land use converted for non-agricultural purposes. Admittedly, the land over which the petitioners' sought to construct a building for residential use is an agricultural land. Unless the competent authority grants a certificate to the effect that the land was being used for poultry purposes, the petitioners are liable to produce the conversion certificate. This view of mine derives support from the recent Division Bench judgment, dated 28.8.2015, of this Court in Writ Appeal No.702 of 2010 and batch.

In the above view of the matter, the Writ Petition is dismissed, however, with liberty to the petitioners to approach the competent authority under the Act for issuing necessary certificate to the effect that the above-mentioned land is exempted from payment of the tax under the Act. If such certificate is obtained, the same will constitute sufficient compliance of Condition No.4 of the impugned proceedings.

As a sequel to dismissal of the Writ Petition, W.P.M.P.No.52157 of 2015 filed by the petitioners for interim relief is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

14th December, 2015
DR