

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24260 OF 2011

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the 1st respondent in issuing the orders in Proc.No.G1/TPS/6476/2011, dated 23.06.2011, the confirmation order dated 09.02.2011, provisional order dated 27.01.2011 and the notice dated 06.11.2010 and going ahead to demolish the first floor of the petitioners' house bearing No.1-10-18/2, Shasahab Gutta, Mahaboobnagar, as illegal and arbitrary.

2. The case of the petitioners, who are wife and husband, is that the 1st petitioner is the owner of house bearing No.1-10-18/2, admeasuring 324 sq.ys. including a plinth roof area of Mangalore tiles admeasuring 140 sq.ft. by virtue of registered sale deed vide document No.1986 of 1987 dated 10.12.1987. Since then they are residing in the same house and enjoying the same for more than 23 years without any interruption. While so, the unofficial respondent No.3, who purchased house near by the petitioners, filed a complaint against the petitioners and also filed WP.No.18842 of 2010. Thereafter, this Court by order dated 17.08.2010 directed the Municipal Corporation to make enquiries into the allegations after giving opportunity to the petitioners. In pursuance of the same, the 1st respondent send four letters, all in a single envelop through registered post having seal dated 12.08.2011 and the same was received by the petitioners on 13.08.2011. The single envelop contains Notice vide proceedings bearing No.G1/TPS/6479/2010, dated 06.11.2010, Provisional order dated 27.01.2011, Confirmation Order dated 09.02.2011 and Endorsement dated 23.06.2011. It is also stated that as per the above said orders the petitioners should be served notices and they should be heard by the municipal authority before taking any action. But, the respondents sent all the letters at a time in one cover which was served on the petitioner on 13.08.2011, without giving any prior notice and opportunity to the petitioners. Aggrieved by the same, present

writ petition is filed.

3. The 1st respondent filed counter affidavit stating that it has served notice on 10.11.2010, after duly obtaining the signature of the 1st petitioner asking him to produce sanctioned plan copies for the constructions made in the premises bearing No.1-10-18/2 and also to submit the registered sale deed documents to claim the ownership on the said premises, within seven days. But, the petitioners failed to submit the same. As the petitioners failed to produce the said documents, Provisional order dated 27.1.2011 was served on the petitioner on 31.01.2011 to show cause within seven days why the Provisional Order issued under Section 228(1) & (2) of APM Act, 1965 should not be confirmed under Section 228(3) of the Act. But the petitioners neither submitted the reply to the provisional order notice nor submitted any copies of sanctioned plan and sale deed documents claiming ownership on the said premises. As such, the respondents served Confirmation order dated 09.02.2011 on the petitioners with a direction to remove the unauthorized construction within seven days from the date of receipt of confirmation order notice. It is also stated that the respondent dispatched the final notice dated 09.05.2011 through post as the petitioners refused to receive the same and as no reply was given to the show cause notice. It is also stated that the respondent authorities on 26.06.2011 have submitted the charge sheet against the petitioners along with provisional order, confirmation order and final notice to the Municipal Standing Counsel to file the STC against the petitioners.

4. The petitioner filed reply affidavit reiterating the contents in the writ affidavit.

5. Learned counsel for the petitioner submits that had the petitioners been issued show cause notice, he would have filed a reply. But the respondents served all the proceedings on 13.08.2011 in one cover which is in violation of principles of natural justice.

6. On the other hand learned standing counsel for the 1st respondent submits

that though petitioner was issued show cause notice to produce sanctioned plan copies for constructions, he failed to produce the same and therefore, Provisional order dated 27.1.2011 was served on the petitioner.

7. Learned counsel for the 3rd respondent reiterated the submissions of the 1st respondent and relied on the counter filed by the 1st respondent.

8. The case of the petitioner is that all the proceedings bearing No.G1/TPS/6479/2010, dated 06.11.2010, Provisional order dated 27.01.2011, Confirmation Order dated 09.02.2011 and Endorsement dated 23.06.2011 dated 6.11.2010, were served on the petitioner on 13.08.2011 in one cover, as such petitioner was not in a position to submit explanation. But, the material papers produced by the respondents clearly show that the petitioner was served all the proceedings at various dates to the same address and the endorsement of the petitioner was also found on the said documents. Though reply is filed reiterating the contents in the writ affidavit, the endorsement shows that the petitioner was served with the notices. More so, the petitioners except denying the receipt of notices, have neither stated anything in the writ affidavit nor produced any documents to show that they have made construction by obtaining approved plan. If the petitioners have any permission to make construction, they could have filed the same along with the writ petition, but they have not filed the same which goes to show that the petitioners do not have any permission to make construction. In view of the same, I do not find any merits in the writ petition.

9. Accordingly, the writ petition is dismissed. Since the learned counsel for the petitioners submits that the A.P.Municipalities Act, 1965 provides for regularization of the construction, dismissal of writ petition will not preclude the petitioners from making representation under such provision. If any such representation is filed the respondents may consider the same in accordance with law. No order as to costs.

10. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

08.06.2015

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