

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.30974 OF 2012**

**ORDER:**

This writ petition is filed seeking to issue a writ, order or direction more particularly, one in the nature of writ of *Mandamus* declaring the action of the respondent Municipality in trying to demolish the petitioner's Building – R/o.15-1-25 (ground + 1st Floor), Main Road, Ward No.11, Ramachandrapuram, East Godavari District, based on the impugned orders passed by respondent No.1 in proceedings U.C.No.5/2011/T.P.S., dated 1.12.2011, including proceedings U.C.No.5/2011/T.P.S., dated 7.12.2011, issued under Sections 228 (1) and 228(1)(2) of the Andhra Pradesh Municipalities Act, 1965 (for short, “the Act”) respectively, without verifying the building plan and without intimating the same to the petitioner contrary to the directions passed by this Court in W.P.No.17039 of 2011 on 19.09.2011 as illegal, void and opposed to Articles 14, 19, 21 and 300-A of the Constitution of India, and consequently, to direct the respondent Municipality to measure the petitioner's building in the presence of the petitioner and verify the same as per the plan submitted by her, as per the directions of this Court in W.P.No.17039 of 2011.

2. Case of the petitioner is that she is the absolute owner of the aforementioned building having constructed a new building in the place of the old building by way of renovation. She removed the old shops and constructed new shops with ground floor and first floor within her site. She did not encroach into the private lane, which exists on the western side of her shop. The neighbours of her building filed W.P.No.3223 of 2010 before this Court wherein this Court directed respondent No.1 to ensure that respondent No.2 shall not make any

unauthorised construction on the road margin. Thereafter, they filed Contempt Case No.724 of 2012 and the same was dismissed. Before dismissal of the contempt case, as respondent No.1 tried to demolish the petitioner's building on the guise of contempt proceedings, the petitioner filed W.P.No.17039 of 2011 on the ground that the petitioner constructed the building on deeming provision since her application for construction, dated 30.11.2009, was not rejected and no order was served on her. In the said writ petition, interim direction was granted not to demolish the petitioner's building. On 19.9.2011, the said writ petition was disposed of wherein respondent No.1 was directed to verify the plan submitted by the petitioner with reference to the constructions raised by her and to examine the constructions with reference to the said plan as to whether the petitioner has raised the constructions in accordance therewith and if it was found that the petitioner raised constructions in deviation of the plan submitted by her, fresh notice under Section 228(1) of the Act along with the provisional order shall be served on her within a period of one month from the date of receipt of a copy of that order and conversely, if respondent No.1 was satisfied that the constructions were raised by the petitioner without deviation, further action shall be dropped. The respondent Municipality, after receipt of this Court's directions, dated 19.9.2011, without taking measurements of her building or without informing her in respect of conducting of verification, issued notice under Section 228 (1) of the Act on 01.12.2011. The said notice was served on 03.12.2011. Again, on 07.12.2011, respondent No.1 issued confirmation notice for taking action immediately against her under Section 340 of the Act and also for taking steps for demolition of the building. In response to the said proceedings, she filed objections on 09.12.2011 stating that no measurements were taken in her presence or no information in respect of the verification was given to her. The respondents never visited the petitioner's building and never verified the building construction along with the plan submitted by her, as per

the directions of this Court on 19.9.2011. Aggrieved by the same, the petitioner filed the present writ petition.

3. Heard Sri Mummaneni Srinivasa Rao, learned counsel for the petitioner, Sri Nimmagadda Venkateswarlu, learned Standing Counsel for respondent Nos.1 and 2, and Sri T.V.S.Prabhakar Rao, learned counsel for respondent No.3.

4. Learned counsel for the petitioner says that the confirmation notice, dated 07.12.2011, was issued without considering the objections, dated 09.12.2011, of the petitioner and without affording an opportunity to the petitioner and hence, he prays to set aside the impugned orders.

5. On the other hand, Sri T.V.S.Prabhakar Rao submits that the petitioner has not obtained any permission from the respondent Municipality and as the respondents were satisfied that the petitioner made constructions in deviation of the building plan without permission, the respondents issued the confirmation notice, as per the directions of this Court in W.P.No.17039 of 2011 and as such, the same cannot be interfered with, and hence, he prays to dismiss the writ petition.

6. I find that sufficient time was not granted to the petitioner for filing objections. More so, the petitioner has filed objections on 9.12.2011. In the meanwhile, the confirmation notice was issued. Notice informing to remove the illegal constructions by giving three days time is not a sufficient notice.

7. Since the time granted in the notice, dated 01.12.2011, is only three days and as it is not a sufficient notice, the impugned order is set aside. The respondent Municipality shall issue notice to the petitioner as well as respondent No.3 within a period of two (2) weeks from the date of receipt of a copy of this order and thereafter, pass appropriate

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**DATE: 08.09.2015**

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