

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.7723 of 2009

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, assails the notice issued by the respondents 2 and 3 herein under the provisions of Section 217 (1) and (2) of the A.P. Municipalities Act, 1965.

2. Heard Sri N. Ravi Prasad, learned counsel for the petitioners, Sri Vnekareshwara Nimmagadda, learned standing counsel for the respondents apart from perusing the material available before the Court.

3. According to the petitioners, they are the absolute owners of 639.95 sq. meters of site bearing Municipal Dr.No.22-16-80 in Ward No.21, Rest House Road, Bhimavaram. The building application submitted by them was approved on 13.06.2008 by the second respondent municipality.

4. It is the further case of the petitioners herein that they constructed the building strictly in accordance with the approved plan and completed the constructions in January, 2009. It is the case of the petitioners that the municipal authorities assessed the building for property tax vide assessment Nos.1074001166 and 1074001193 and that the petitioners herein have been paying the tax to the second respondent.

5. The third respondent herein issued a notice purportedly under the provisions of 217 (1) and (2) of the A.P. Municipalities Act, 1965 vide UC BA No.4/2009, Division-II dated 25.03.2009 asking the petitioners herein to remove the constructions said to have been made contrary to the plan. Subsequently, the respondents 2 and 3 herein issued final notice under Section 217 (2) of the A.P. Municipalities Act, 1965 conforming the provisional notice. Challenging the said provisional

notice and the final notice, the present writ petition came to be filed.

6. This Court, while ordering *Rule Nisi* on 17.04.2009, granted orders of *status quo* in WPMP.10130 of 2009 and the said order is still subsisting.

7. Responding to the *Rule Nisi* issued by this Court, a counter affidavit is filed by the second respondent Municipal Commissioner denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

8. The principal grievance of the petitioners herein is that they submitted a reply dated 05.04.2009 in response to the provisional notice dated 25.03.2009. It is also the case of the petitioners herein that there are no violations or deviations in the constructed building and the cellar area is left open completely to have enough parking area. A copy of the reply dated 05.04.2009 said to have been submitted by the petitioners herein in response to the provisional notice is filed along with the writ petition wherein the petitioners stated that they never violated the sanctioned plan and the officials of the respondent municipality inspected the building.

10. Taking into consideration the totality of the circumstances and in view of the explanation said to have been submitted by the petitioners herein on 05.04.2009, this Court deems it appropriate to dispose of the writ petition with a direction to the respondent municipality to consider the explanation dated 05.04.2009 said to have been submitted by the petitioner herein before proceeding further with the matter.

11. For the aforesaid reasons, the writ petition is disposed of, directing the respondent No.2 herein to consider the explanation dated 05.04.2009 said to have been submitted by the petitioners herein, in response to the provisional notice dated 25.03.2009, after giving notice and opportunity of being heard to the petitioner and pass appropriate orders. Till the said exercise attains finality, the interim order of *status quo* granted earlier on 17.04.2009 in WPMP.10130 of 2009 shall

continue to operate. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:11.02.2015
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Date :11.02.2015

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Between:

Bonda Sreeramamuirthy S/o Venkata Subba Rao,
Aged 44 years and another. ... Petitioners

and

The Governemnt of Andhra Pradesh,
Represented by Secretary, Municipal Administration,
Secretariat, Hyderabad and two others.
... Respondents

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