

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.36349 of 2015

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Between:

Shaik Magbul Basha

.. Petitioner

and

The State of Andhra Pradesh,

represented by its Principal Secretary,

Municipal Administration Department,

Hyderabad and others

.. Respondents

JUDGMENT PRONOUNCED ON: 07th November, 2015

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

1. Whether Reporters of local newspapers

may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment

may be marked to Law Reporters/Journals? Yes/No

3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment? Yes/No

CVNR,J

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+ WRIT PETITION No.36349 of 2015

% 07.11.2015

Shaik Magbul Basha

.. Petitioner

Vs.

**\$ The State of Andhra Pradesh,
represented by its Principal Secretary,**

Municipal Administration Department,
Hyderabad and others

.. Respondents

! Counsel for the petitioner: Mr.C.Prakash, for Mr.K.Srinivas

Counsel for respondent Nos.1 and 3: Government Pleader
Municipal Administration and Urban Development (AP)

Counsel for respondent No.2: --

<Gist :

>Head Note:

? Cases referred:

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Municipal Administration and Urban Development (AP)

Counsel for respondent No.2: --

The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to declare the action of respondent No.2 in directing the petitioner to remove the compound wall at Door No.21-2-23/6, Itikampadu Road, Ponnur, Guntur District, *vide* notice, dated 23.10.2015, as illegal and arbitrary. The petitioner sought for a consequential direction to respondent Nos.2 and 3 not to demolish the compound wall.

The petitioner claims to be an ex-army person and has constructed a building over a property purchased by him under a registered sale deed, dated 22.10.2007, after obtaining permission from respondent No.2 municipality. He has further alleged that on the complaint given by a person, *viz.*, *Naidamma*, who is constructing an apartment on the southern side of the petitioner's house, wherein it was alleged that the petitioner has occupied the municipal road margin without permission, respondent No.2 has issued the impugned notice in exercise of his power under Section 192 of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act'),

directing the petitioner to remove the encroachments, failing which, such encroachments will be removed under Section 360 (2) of the Act by the municipality itself and the costs thereof will be recovered from the petitioner. The petitioner pleaded that no show-cause notice was issued to him before the impugned notice was issued.

Under Section 192 of the Act, if any person encroaches the municipality land, the Commissioner is empowered to remove the same. A bare reading of this provision shows that a prior notice to show cause why an order of encroachment shall not be passed has not been envisaged. However, the law is well settled that where an order proposed to be passed is likely to affect the interests of a party, such party is entitled to prior notice and even if a statutory provision does not, in express terms, provide for such notice, such requirement shall be read into the provision. (See: **Swadeshi Cotton Mills vs. Union of India, Manohar vs. State of Maharashtra and another, Uptron India Limited vs. Shammi Bhan and another, D.K.Yadav Vs. J.M.A.Industries Limited and Punjab National Bank vs. Kunj Behari Misra**)

One of the most important facets of administrative law is observance of the principles of natural justice. In a civilized society, no statute, which does not recognize this principle can be treated as a valid piece of legislation. If Section 192 of the Act is construed in its literal sense, there is a possibility that even in case of a private land, the competent authority may for extraneous reasons abuse its power and evict the owner of the property by terming him as an encroacher. Therefore, in order to protect a citizen from such abuse, it is essential that the principles of natural justice are read into the provision of Section 192 of the Act. So read, the said provision must be understood as providing for issue of a show cause notice to the alleged encroacher and giving him an opportunity of explaining his stand. It is only in the event that the Commissioner is not satisfied with the explanation offered by the alleged encroacher that he can pass an order directing removal of the encroachment. Admittedly, no such show cause notice has been issued in the present case.

Hence, the impugned notice, dated 23.10.2015, issued by respondent No.2 is

set aside. The said respondent is, however, left free to issue a show cause notice and pass an appropriate order after considering the explanation/objections that may be filed by the petitioner.

The Writ Petition is accordingly allowed.

As a sequel to allowing the writ petition, W.P.M.P.No.46812 of 2015 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

07th November, 2015

Note: L.R. copies to be marked.

(B/o)

GHN