

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION NOs.21762 and 22298 of 2015

WP 21762 of 2015

Between :

Shaik Khadar Basha

R/o Kondayapalem gate, D No. 25/2/1693

Nellore

.... Petitioner

And

State of A P

Rep by its Secretary

Municipal Admn Dept

Secretariat Buildings, Hyd and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED

:23.7.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : / No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : / No
To Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : / No
Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO
WRIT PETITION NOs.21762 and 22298 of 2015

ORAL ORDER:

Heard the learned counsel for petitioners, learned Government Pleader for Municipal Administration (A) and Sri Ancha Pandu Ranga Rao, learned standing counsel for Nellore municipal corporation. With the consent of counsels appearing for both parties, the writ petition is taken up for final disposal at the admission stage. For convenience parties are referred to as arrayed in W.P.

No.21762 of 2015.

2. Petitioners claim to be residents of Nellore town. In Ramnagar area, Government allotted land in Ac.0.93 cents in Survey No. 573/1 for burial ground for muslim community vide notification dated 11.1.1979 and the same has been utilized by the local muslim community as burial ground. While so, 5th respondent obtained building permission for construction of multi storied building on the land earmarked as burial ground. Having come to know about the same, complaint is lodged before the District Collector and the District Collector has passed orders on 26.5.2015 directing the respondent municipal corporation to take further action as warranted by law and if necessary to cancel the building permission already granted. Alleging that in spite of such directions issued, no further action is taken and illegal permission granted to 5th respondent is not withdrawn, W.P. No. 21762 of 2015 is instituted.

3. 5th respondent claims that after verifying the title land to an extent of Ac.0.70 cents in Survey No. 573/1, 5th respondent and three others purchased the same vide registered document dated 27.11.2012 and in order to develop the property she has applied for building permission and valid building permission was granted on 27.10.2014 by the respondent municipal corporation. While so, 5th respondent was served with order dated 15.5.2015 annulling the building permission granted on 27.10.2014 along with notice dated 16.4.2015 on the same day. Questioning the same, W P No. 22298 of 2015 is instituted. It is contended that he was not afforded reasonable

opportunity to contest the allegations made in the show cause notice and without affording due opportunity simultaneously show cause notice as well as final order are served.

4. According to learned counsel for 5TH respondent, he has made endorsement on show cause notice as well as notice under Section 450 of the GHMC Act on the same day and they were served on the same day. There is no denial with reference to this particular aspect. Bare look at the show cause notice dated 16.4.2015 filed as annexure P-2 in W.P. No. 22298 of 2015 it is clear that the Additional Commissioner of the Municipal Corporation has signed it on 26.5.2015 whereas the final notice under Section 450 of the HMC Act was issued on 15.5.2015, it would be impossible to serve a notice in advance, even before it was signed.

5. Since it is the specific assertion of the petitioner that he was denied reasonable opportunity and it appears to be true, in the interest of justice,

I deem it appropriate to remit the matter for reconsideration by the respondent municipal corporation from the stage of issuance of show cause notice. The 5th respondent shall file her explanation along with all the relevant documents in support of her claim within a period of one week from the date of receipt of copy of this order. On receipt of explanation from the petitioner, petitioners in W P No. 21762 of 2015 shall also be served with a notice and within one week from the date of receipt of notice, they shall file their explanations/objections along with material in support of their claim. On receipt of respective explanations/objections, the municipal corporation shall fix a date of hearing and give opportunity of hearing to both the parties and pass orders as warranted by law consequent to show cause notice dated 16.4.2015. Such orders be passed as expeditiously as possible, preferably within a period of two weeks from the date of receipt of explanations/objections from petitioners. In view of serious controversy, I am of the opinion that till final orders are passed, 5th respondent shall not undertake further construction.

6. Subject to above directions, writ petitions are disposed of. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:23.7.2015
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOs.21762 and 22298 of 2015

Date: 23.7.2015