

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.5175 OF 2015

ORDER :

This writ petition is filed seeking writ of mandamus declaring the action of the 2nd respondent in passing order in R.C.No.C5-593/2014, dated 18.02.2015 to demolish the structure of R.C.C. Roof, sheet and related to industry of NCL Alltek & Seccolor Ltd., situated in R.S.No.300 (P), Kavuluru Village, G.Konduru Mandal, Krishna District as illegal and arbitrary and contrary to the provisions of A.P. Urban Areas (Development) Act, 1975 as well as provisions of A.P.Capital Region Development Authority Act, 2014 and consequently to direct the respondents not to demolish the structure of RCC roof sheet related to the petitioner industry.

2. It is the case of the petitioner that the petitioner firm has purchased the land to an extent of Ac.9.01 cents in R.S.No.300 (P), Kavuluru Village, G.Konduru Mandal, Krishna District for valuable consideration by way of registered Sale Deed dated 28.03.2011. The petitioner firm with intent to start AAC Bricks manufacturing industry, submitted a common application dated 05.02.2014 with the Nodal Agency of the State Level Single Window Clearance Committee and also with the 3rd respondent along with plan. The Nodal Agency has acknowledged the same and instructed the petitioner-firm to obtain clearances from the concerned departments. Accordingly, the petitioner firm obtained requisite permissions from the concerned departments except the 3rd respondent. The 3rd respondent returned the application and plan with certain objections and later, the petitioner-firm resubmitted the same on 28.03.2014 along with covering letter, after complying with all the objections raised by the 3rd respondent. As the 3rd respondent has neither finalized nor rejected the application of the petitioner firm within 90 days, the petitioner firm has started construction in the light of deemed provision under Section 14 (5) of the A.P.Urban Areas (Development) Act, 1975 (for short 'the Act of 1975'). It is stated that the authorities of the 3rd respondent inspected the site and never raised any objections. After passing of the A.P.Reorganization Act, 2014, the

Government of Andhra Pradesh has brought the A.P. Capital Region Development Authority Act, 2014 (for short 'the Act of 2014) and established 2nd respondent authority to carryout the functions in the place of 3rd respondent and the said Act was came into force on 01.01.2015. Subsequently, the petitioner started the execution of work i.e., running the industry by producing the AAC bricks. While things stood thus, the 2nd respondent passed an order dated 30.01.2015 under Section 116 (1) of the Act of 2014 stating that construction of the petitioner firm is illegal. The petitioner firm submitted explanation on 05.02.2015 and also requested to give an opportunity of personal hearing before passing final order. In spite of the same, the 2nd respondent authority without considering the said explanation, passed impugned order under Section 116 (3) of the Act of 2014 vide proceedings dated 18.02.2015 directing the petitioner to remove the machinery within 15 days. Aggrieved by the same, the present writ petition is filed.

3. Heard Sri Narasimha Rao Gudiseva, learned counsel for the petitioner as well as Smt. K.Mani Deepika, learned Standing Counsel for the respondents 2 and 3 and perused the record.

4. Sri Narasimha Rao Gudiseva, learned counsel for the petitioner states that since no orders have been passed by the respondent authorities on the application of the petitioner dated 28.03.2014 within a period of 90 days, the petitioner proceeded with the construction under the deemed provision under Section 14 (5) of the Act of 1975, as such, the impugned notice is bad, illegal and at any rate, arbitrary. He further contends that the so called deviations are not serious in nature and same can be condoned. He further submits that even as per Section 110 (4) of the Act of 2014, when no orders are passed on the application for permission to construct a building, the permission is deemed to have been granted. He also submits that though explanation 05.02.2015 is filed to the show-cause notice dated 30.01.2015, without considering the same, impugned order has been passed without giving sufficient reasons. As such, the impugned order dated 18.02.2015 is liable to be set aside. In support of his contention, he relied on the judgment reported **Oryx Fisheries Private Limited v. Union of India and others.**

5. On the other hand, Smt. K.Mani Deepika, learned Standing Counsel for

respondents 2 and 3 vehemently contended that without any building permission, the petitioner firm made construction. She further submits that the Commissioner of Industries, Government of Andhra Pradesh has forwarded the proposal received by the respondent authorities on 19.02.2014 for permission for construction of the petitioner firm and the same was processed and found that the site is earmarked as Agriculture use as per Zonal Development Plan of Kondapalli Zone, which was approved by the Government vide G.O.Ms.No.678, dated 29.12.2006. By virtue of which, the construction of proposed industry is not permissible as per Zoning Regulations. Therefore, the said proposal was rejected vide letter dated 25.02.2014. She would contend that later Sri P.S.Chandra Sekhara Varma, Vice-President of the petitioner-firm has submitted application along with plans and sale deed towards proof of ownership, for change of land use from Agricultural use to Industrial use for manufacturing AAC Bricks. After scrutiny, the respondents have recommended the proposal vide letter dated 30.06.2014 and the Government had also issued draft notification dated 26.11.2014 for change of the land use from Agricultural to Industrial and directed the concerned authority to publish notice in the local news papers calling for objections and suggestions. Subsequently, in pursuance to the paper publication, Sri G.Krishna Rao has filed objection petition on 08.01.2015 stating that the subject land belongs to Sri Santhana Venugopala Swamy Temple and requested to take necessary action against the industry proposal in the endowment land. In pursuance to the same, the respondent authority has requested the Sub-Collector, Vijayawada vide letter dated 09.01.2015 to verify and furnish remarks whether the land in question belongs to Sri Santhana Venugopala Swamy Temple or belongs to petitioner-firm and that the said information is yet to be received. She would contend that when the technical staff verified the said site, it is found that the petitioner is constructing the industry in the subject site unauthorizedly. She further submits that show-cause notice under Section 115 (1) of the Act of 2014 was issued to the petitioner firm on 30.01.2015. The respondent authority has also passed order dated 30.01.2015 under Section 116 (1) to stop further construction. After receipt of the same, Sri P.S.C.Varma, Vice-President of the petitioner firm has submitted his explanation dated 05.02.2015 and after considering the same, order under Section 116 (3) of the Act of 2014 was issued, as the explanation submitted by the Vice-President of petitioner-firm was not satisfactory.

6. She also submits that the petitioner has not intimated about the commencement of work as per Section 110 (4) of the Act 2014, which is similar to Section 14 (5) of the Act of 1975. If the petitioner intimates about the commencement of work in writing, then only the deeming provision comes into play. She also submits that no such averment is made either in the writ affidavit or in the explanation dated 05.02.2015 submitted by the Vice-President of the petitioner firm to the show-cause notice dated 30.01.2015. She also submits that the Endowment Department has filed objections for grant of building permission on 08.01.2015 stating that the land belongs to Sri Santhana Venugopala Swamy Temple. The Executive Officer of Sri Santhana Venugopala Swamy Temple also submitted objection on 09.01.2015 stating that O.A.No.771 of 2014 in respect of which the petitioner firm is seeking permission, is pending in Endowment Tribunal and the Tribunal directed the petitioner firm to pay the amounts towards use of the land. She further submits that since litigation is pending, no permission can be granted to the petitioner firm. She further submits that though the petitioner-firm is a party to O.A.No.771 of 2014, the petitioner has suppressed the same and filed the present writ petition. She submits that the construction made by the petitioner firm is illegal, as such, after considering the explanation filed by the petitioner firm, the impugned order has been passed under Section 116(3) of the Act of 2014 by giving sufficient reasons. She further submits that the litigation with regard to subject property is pending and objections have been received for conversion of land from Agricultural use to industrial use and even the proceedings have not attained finality.

7. Even according to the petitioner, construction of building permission at the subject premises has been rejected and plans have been returned as per proceedings dated 25.02.2014. Thereafter, the Vice-President of the petitioner-firm resubmitted the same on 28.03.2014 along with proposal for conversion. Basing on the said explanation, the proposals were sent to the first respondent for conversion of land use. Thereafter, the Government has issued memo dated 26.11.2014, directing the Vice-Chairman, VGTM to issue public notice in news papers calling for objections. In pursuance to the same, notice was published in the daily news papers Indian Express and Andhra Bhoomi on 10.12.2014. At this stage, objections have been received from the Executive Officer of Sri

Santhana Venugopala Swamy Temple on 09.01.2015 and also on 08.01.2015 from one G.Krishna Rao stating that the land belongs to Sri Santhana Venugopala Swamy Temple. Memo dated 26.11.2014 also goes to show that a copy is marked to the petitioner. More so, the petitioner has not intimated about the commencement of the construction, as such, deeming permission for grant of construction does not arise. More so, the petitioner has also not given any specific date on which he has commenced construction. Though the petitioner is also party to O.A.No.771 of 2014 and an order of *status quo* was passed at the instance of Sri Santhana Venugopala Swamy Temple authorities filed against the petitioner, which is pending, the same is not stated by the petitioner either in the writ affidavit nor in the explanation filed before the 2nd respondent authority. The petitioner has suppressed all these facts and filed the present writ petition.

8 . Admittedly, the petitioner-firm made an application with an intention to construct building in the agricultural land, which is pending with the concerned authorities. Unless such permission is obtained, the said land cannot be used for industrial purpose, without converting the same to industrial use, because of zoning regulations. When his application was rejected, he resubmitted the same with the proposals. However, on the date of alleged construction also, no conversation proceedings were issued in favour of the petitioner by the respondent authorities and the petitioner is aware of all these aspects. In spite of the same, the petitioner firm proceeded with the construction on the basis of deemed provision under Section 14 (5) of the Act of 1975.

9. For better appreciation, Section 14 of the Act of 1975 and Section 110 of the Act of 2014, are extracted hereunder, which reads as follows:

“14. Application for permission:

(1).....

(2).....

(3).....

(4).....

(5) If, within ninety days after the receipt of any application made under this

section for permission, or of any information or further information required under rules or regulations, the Authority has neither granted nor refused its permission, such permission shall be deemed to have been granted; and the applicant may proceed to carry out the development but not so as to contravene any of the provisions of this Act or any rules or regulations made under this Act.”

Section 110 of the Act of 2014 reads as follows:

Section 110: Application for development permission:

(1).....

(2).....

(3).....

(4) If within sixty days after the receipt of such application made under this section for development permission for layout or such similar land development scheme or construction of building or of any information or further information required, the Commissioner has neither granted or refused permission, such permission shall be deemed to have been granted and the applicant after intimating the Commissioner in writing, may proceed to carry out the development but not so as to contravene any of the provisions of the Act or plans or schemes or any rules or regulations made under the Act.”

A reading of the above provision clearly shows that deeming permission will not come into existence, unless the applicant intimates about the commencement of construction in writing. More so, the construction made must not contravene any provisions of the Act, or any Rules or Regulations made under this Act but in the present case, the construction is made on land which is meant for agriculture purpose as per Zoning Regulations and land conversion has not taken place, as such, it is in violation of provisions of the Act and Rules. The impugned order does contain reasons which are relevant for passing impugned order. Even in the explanation dated 05.02.2015 filed by the Vice-President of the petitioner firm in response to the show-cause notice dated 30.01.2015, nothing is stated that they have intimated about the commencement of construction to the respondent authorities. According to the respondents, except resubmitting the application on 28.03.2014, the petitioner has not submitted conversion proceedings, as such, deeming provision does not come into play. Even the impugned order dated 18.02.2015 shows that the first application of the petitioner dated 10.02.2015 was rejected on 25.02.2014,

within a period of 15 days i.e., within 90 days from the date of issuance of notice providing sufficient reasons. Therefore, the assertion of the petitioner that he is proceeding with the construction under the deeming provision i.e., either under Section 14(5) of the Act of 1975 or under Section 110 (4) of the Act of 2014, cannot be accepted. Moreover, the petitioner has suppressed about the pendency of O.A.No.771 of 2014 before the Endowment Tribunal, which was filed in respect of the subject land in the writ petition.

In view of the above facts and circumstances, I do not see any reason to interfere with the impugned order dated 18.02.2015 passed by the 2nd respondent and hence the writ petition is liable to be dismissed.

Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

21.04.2015

kvs

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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kvs

