

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.7098 of 2009

ORDER:

This writ petition challenges the notice dated 9.3.2009 issued by the respondent herein under Sections 228(1)(2) and 217(1)(2) of A.P. Municipalities Act, 1965.

2. Heard Sri V.Jithendar Rao, learned counsel for the petitioner and Sri D.Bhaskar Reddy, learned Standing Counsel for the Municipality, apart from perusing the material available on record.

3. According to the petitioner, he is the absolute owner and possessor of residential house bearing Municipal No.1-3-274 of Chinnathotawada Ward No.1, Koratla Mandal, Karimnagar district and he made an application to the respondent herein for building permission and the respondent municipality granted approval vide proceedings Rc.No.G/93/134/2008-09 dated 19.12.2008 and after getting approval from the municipality, he started construction in the said plot in accordance with the plan approved by the respondent municipality. The respondent municipality issued a show cause notice alleging illegal construction by the petitioner herein, while asking the petitioner to submit explanation within (7) days.

4. According to the petitioner, immediately after receipt of the said show cause notice, he approached the respondent authorities along with building plan and approval granted by the municipality and explained the same to the officials of the respondent municipality. According to the petitioner, he also brought to the notice of the respondent authorities that there is no violation of building plan and construction is strictly in accordance with the approved plan. It is further pleaded that the petitioner also requested the officials of the respondent municipality to inspect the premises, but none of the respondent officials did visit the premises. Subsequently, the

respondent municipality issued final notice under Section 228 and 217(3) of A.P. Municipalities Act, 1965 confirming show cause notice while asking the petitioner to remove the constructions said to have been made by the petitioner contrary to plan. After receipt of the said final notice, the petitioner submitted a representation dated 15.3.2009, which was received by the municipal council on 26.3.2009.

5. This Court, while issuing rule nisi on 7.4.2009, in W.P.M.P.No.9289 of 2009 directed both parties to maintain status quo as on 7.4.2009 until further orders.

6. It is contended by the learned counsel for the petitioner that the impugned notice dated 9.3.2009 is illegal, arbitrary, null and void and violative of principles of natural justice and opposed to the very spirit and object of provisions of A.P. Municipalities Act. It is further contended by the learned counsel for the petitioner that the petitioner herein made construction strictly in accordance with the approved plan and there is no deviation from the approved plan, as such, the impugned notice of demolition cannot be sustained.

7. Per contra, it is vehemently argued by the learned Standing Counsel that there is no illegality in the impugned notice and the respondent authorities by strictly adhering to the relevant provisions of A.P. Municipalities Act, issued show cause notice asking the petitioner to submit explanation and the petitioner herein did not submit any explanation, as such, the respondent herein issued final notice of demolition. It is submitted by the learned Standing Counsel that in view of availability of alternative remedy of appeal under the provisions of Section 345 of A.P. Municipalities Act, 1965, the present writ petition is not maintainable.

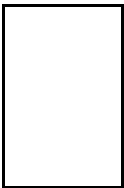
8. The material available before this Court clearly discloses that the respondent municipality issued a show cause notice under Section 228(1) of A.P. Municipalities Act and according to the petitioner, he approached the Commissioner and apprised the situation and also

brought to the notice of the respondent that there is no violation of building plan. Subsequently, the respondent Municipal Commissioner issued final notice under Section 228(3) of the Act, asking the petitioner to remove the constructions said to have been made contrary to the plan. The material available on record further shows that the petitioner herein submitted representation on 15.3.2009 to the respondent municipality, which was received by the municipality on 26.3.2009. The submission of the said representation is not disputed by the respondent herein. It is the strong objection of the learned Standing Counsel that as efficacious alternative remedy under the provisions of Section 345 of A.P. Municipalities Act, 1965 is available to the petitioner, the present writ petition is not maintainable and the petitioner herein has to approach the appellate authority under the Statute. This Court finds force in the said contention. Therefore, taking into consideration the nature of controversy and having regard to the provisions of Section 345 of A.P. Municipalities Act, 1965, this Court deems it appropriate to permit the petitioner to approach the appellate authority under the provisions of Section 345 of the Act.

9. For the aforesaid reasons, the writ petition is disposed of permitting the petitioner to file appeal under Section 345 of A.P. Municipalities Act, 1965 before the appellate authority within a period of one month from the date of receipt of this order. If any such appeal is filed, the appellate authority shall consider the same and pass appropriate orders in accordance with law. Till such exercise attains finality, the interim order of status quo granted by this Court on 7.4.2009 shall continue to operate. It is also made clear that if the appeal so directed is not filed within the time stipulated above, this order would not enure to the benefit of the petitioner. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 4.2.2015
DA



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

W.P.No.7098 of 2009

-
-
-
-
-

4.2.2015

DA

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.7098 of 2009

o

Date : 4.2.2015

-

-

Between:

N.Laxminarayana

... Petitioners

and

The Koratla Municipality,
represented by its Commissioner,
Koratla, Karimnagar district.

... Respondent