

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 5001 of 2011

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ORDER :

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It is the case of the petitioner that he is the owner and possessor of plot to an extent of 183.33 sq.yds, having purchased through registered sale deed dated 11.10.2010 and obtained construction permission from the competent authority. When the petitioner was making construction as per the approved plan, the respondent authorities are trying to interfere with the same, he filed W.P.No.3023 of 2011 and this Court, granted interim order on 11.02.2011 in W.P.M.P.No.3757 of 2011 directing the respondents not to interfere with the construction, if it is made in accordance with the sanctioned plan. In pursuant to the interim orders, the petitioner has completed the construction. Subsequently, the respondent issued notice dated 11.02.2011 purported to be under Section 228 (1) & (2) of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act of 1965') alleging that the petitioner made construction in deviation to the approved plan followed by final order under Section 228 (3) of the Act of 1965 dated 14.02.2011 for removing the deviations. Aggrieved by the same, present writ petition is filed.

2. Heard Sri Polisetti Raadha Krishna, learned counsel for the petitioner and Sri N.Praveen Kumar, learned Standing Counsel for the respondent Municipality.

3. Learned counsel for the petitioner submits that impugned provisional order dated 11.02.2011 and final order 14.02.2011 have been sent at a time without providing an opportunity of filing objections/explanation to the provisional order. He also contends that the impugned provisional order dated 11.02.2011 is vague and it does not indicate what are the deviations committed by the petitioner and in the absence of the same, petitioner is unable to submit explanation to the same.

4. In this case, it is to be seen that though the writ petition is filed in the year 2011, no counters are filed. Moreover, in the impugned provisional order dated

11.02.2011 which is issued under Section 228 (1) & (2) of the Act of 1965 does not indicate what the deviations are and that it is a vague as it can be. Mere issuance of notice does not comply with the principles of natural justice. Unless specific allegations are made in the impugned orders, petitioner will not be in a position to explain the same. Even the final order dated 14.02.2011 also does not indicate what are the deviations committed by the petitioner. More so, both the provisional order dated 11.02.2011 and final order dated 14.02.2011 have been sent to the petitioner at once and in both the impugned orders, sufficient time has not been granted to the petitioner for submitting objections.

In view of above facts and circumstances, without going into the merits or otherwise of the deviations alleged to have been committed by the petitioner, only on the ground of violation of principles of natural justice, the impugned orders dated 11.02.2011 and 14.02.2011 issued by the respondent Municipality are liable to be set aside and accordingly set aside.

Accordingly, this writ petition is allowed. However, this order will not preclude the respondent authority to issue fresh notice as contemplated under law in respect of the deviations committed by the petitioner while making construction and after giving an opportunity of hearing to the petitioner, take appropriate action in accordance with law.

There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

06.10.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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