

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.4104 of 2012

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ORDER:

This writ petition is filed declaring the notice dated 10.02.2012 issued by the 2nd respondent calling upon the petitioner to remove the compound wall constructed in an extent of 0.03 ¼ cents out of 0.06 cents in Sy.No.311 of Somireddypalli Village, B.Mattam Mandal, YSR District alleging that the same is constructed in Public Rastha, as illegal and arbitrary.

The case of the petitioner is that 2nd respondent issued the impugned proceedings dated 10.02.2012 asking the petitioner to remove the constructions made by him, without any prior notice and without giving an opportunity to substantiate his claim that the property, which is subject matter of the notice belongs to him.

Heard the learned counsel for the petitioner.

Learned Standing counsel for the respondents submits that since the petitioner has encroached the public road, action has been initiated against him under Section 98 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'). As such, no interference is called for in the writ petition. He also submits that the petitioner instead of submitting explanation to the notice, straight away rushed to this Court and he has not even submitted any documents in respect of his claim. He also submits that the sale deed produced before this Court also shows that there exists a road on the eastern side as alleged in the impugned notice.

A perusal of the impugned proceedings show that it is straight away issued to the petitioner without prior notice for removing the construction made by him whereas the case of the petitioner is that the said passage is owned by him. In view of the same, this Court granted status quo at the time of issuing notice. In the counter, it is stated that the Municipality is not made a party to any of the suits filed by the

petitioner and since the petitioner has constructed a compound wall by encroaching the public road, action has been initiated under Section 98 of the Act. It is also stated that an appeal lies under Section 128 of the Act against the said notice.

In view of the above, the impugned notice issued to the petitioner shall be treated as show cause notice and petitioner shall submit explanation to the same within four weeks from today. On such explanation being submitted by the petitioner, the respondents may consider the same in accordance with law and take a decision there upon. Till then, status quo obtaining as on today shall be maintained. If the petitioner fails to file explanation within the aforesaid period, it is open for respondent authorities to take action in accordance with law.

With the above direction, the writ petition is disposed of. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 15.09.2015
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