

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.561 OF 2015

ORDER :

This petition is filed for a writ of *Mandamus* declaring the action of the 2nd respondent in not considering the representation dated 11.12.2014 submitted by the petitioners herein and in not approving the plan submitted by the petitioners for the purpose of constructing a building at H.No.32-13-42 and 31-13-42/a, Boyapati Madhavarao Street, Mogalrajapuram, Vijayawada as illegal and arbitrary and for a consequential direction to the 2nd respondent to consider the representation dated 11.12.2014.

The case of the petitioners is that they are the owners of existing old tiled house with open site admeasuring 281.76 Sq. Ys. Purchased from Garimella Murali Krishna, Garimella Balaji, Yalamanchili Parvathi and Mukkapati durga under a registered sale deed vide document No.6691/2012, dated 12.09.2012. Thereafter, the petitioners made an application to the 2nd respondent on 06.12.2012 for grant of building permission for construction of residential building in the place of old tiled house No.32-13-42 & 32-13-42/A, N.T.S.No.1/1, L.P.No.78/81, MPL.No.25, BIT N-3, Plot No.316/3, 316/2, 316/1, Assmt. No.208913, by enclosing the proposed plan as well as other documents. But, the 2nd respondent returned the application with an endorsement that the applicants have purchased the patta site without prior permission from the Government from the original patta holders. After receiving the same, the petitioners resubmitted the application to the 2nd respondent on 12.02.2013 stating that

though as per the patta conditions, without prior permission from the 3rd respondent, the assignee is not entitled to alienate, mortgage, execute the gift deed or lease out the said property for a period of ten years from the date of assignment, they have purchased the land in question from the assignee after expiry of more than 30 years from the date of assignment, as such, no prior permission is required from the competent authorities. But, the petitioners' application was returned by the 2nd respondent, once again, on the ground that the applicant has not submitted the link documents, though the petitioners have submitted requisite documents along with the application. Thereafter, the petitioners have resubmitted the application on 09.05.2013 along with detailed representation by enclosing all the link documents. Even after resubmission of the application by enclosing link documents, the 2nd respondent did not consider the request of the petitioners for grant of building permission. Questioning the said action, the petitioners have filed WP.No.29175 of 2013 and this Court disposed of the said writ petition with a direction to the 2nd respondent to deal with the application submitted by the petitioners therein seeking permission for construction of a building and in case of any necessity, they must necessarily seek clarification from the RDO, Vijayawada i.e., the 3rd respondent herein, and process the application of the petitioners therein as expeditiously as possible and if the building permission is otherwise liable to be granted, the same may be accorded, after duly collecting the necessary fees and further directed to complete the exercise within a maximum period of two months from the date of receipt of a copy of that order.

Pursuant to the said direction, the 2nd respondent through a

letter dated 09.12.2013, sought clarification from the 3rd respondent whether building permission can be accorded or not to the petitioners. The 3rd respondent, on 30.01.2014, forwarded the said application to the 4th respondent seeking clarification. The 4th respondent in turn on 10.03.2014, addressed a letter to the 3rd respondent stating that the subject land in question was assigned on payment of market value and the said land can be treated on par with private lands, in view of the Judgment in WP.No.31975 of 2012. The 3rd respondent instead of forwarding the said letter addressed by the 4th respondent to the 2nd respondent, again sought clarification by a letter dated 02.06.2014 with regard to the discrepancy between extents in the petition and the extent mentioned in the 4th respondent's report, under which category assignment was made and also sought rule position. While things stood thus, the 4th respondent issued the impugned Form-II notice and Rc.B.198/2014, both dated 13.11.2014 to the petitioner stating that the land to an extent of 165 sq. ys. in Sy.No.1A of Mogalarajapuram is an assigned land and therefore issued show cause notice stating that why petitioner should not be evicted from the said land. The second notice is issued claiming an extent of 36.76 sq. ys. is a Government land and why they should not take possession from the petitioner. Challenging the said notices petitioner filed WP.No.36848 of 2014 and this Court suspended the said notices on 02.12.2014 in WP.MP.No.46113 of 2014 in WP.No.36848 of 2014. Pursuant to the said order the petitioners again made a representation on 11.12.2014 to the 2nd respondent to consider the case of the petitioners for approval of the plan. In spite of the same, the 2nd respondent has not so far considered the representation submitted by the petitioners. Aggrieved by the

same, present writ petition is filed.

Heard learned counsel for the petitioners and learned Standing Counsel for the 2nd respondent-Corporation.

Since representation dated 11.12.2014 submitted by the petitioners is pending before the authorities, it is for the 2nd respondent to consider and dispose of the same in accordance with law.

In view of the above, the 2nd respondent is directed to dispose of the representation dated 11.12.2014 submitted by the petitioners seeking permission for construction of a building in the above said lands by taking all the above facts into consideration and pass appropriate orders in the same.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

22.01.2015

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