

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.25612 of 2015

Between :

Kothamasu Vidyasagar, S/o.Radhakrishna Murthy,
Aged 42 yrs, Occu : Business, R/o.Vigneswara Furnitures,
Andhra Ratna Road, Chirala, Prakasam District.

.. Petitioner

and

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Municipal Administration,
Secretariat, Hyderabad & others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 13.08.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers : Yes / No
may be allowed to see the Judgments ?

2. Whether the copies of judgment may be : Yes / No
marked to Law Reporters/Journals

3. Whether Their Lordship wish to : Yes / No
see the fair copy of the Judgment ?

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.25612 of 2015

ORDER :

With the consent of learned counsel for the petitioner, learned counsel for the 3rd respondent and learned Standing Counsel appearing for the 2nd respondent, this writ petition is disposed of at the admission stage.

2. According to the petitioner, he is the owner of property bearing D.No.20-12-70, Andhra Ratna Road, Chirala, Prakasam District. The 3rd respondent in the writ petition claims to be the owner of property bearing D.No.20-12-69, Andhra Ratna Road, Chirala, Prakasam District. The petitioner challenges the building permission granted by the respondent-Municipality in favour of the 3rd respondent.

3. The petitioner earlier instituted W.P.No.12609 of 2015 alleging that his neighbour is making illegal construction by encroaching into his land and without obtaining due permission. The neighbour filed W.P.No.22850 of 2015 alleging that his application dated 02.03.2015 seeking permission to construct building was earlier rejected on the complaint given by his neighbour (petitioner herein), informing the petitioner to resubmit the application for conducting survey by the Town surveyor. The Town survey was conducted and along with the report of the surveyor, the 3rd respondent submitted application on 16.05.2015 to the Municipality requesting to process the application and the same was pending consideration. This Court disposed of both the writ petitions by common order dated 23.07.2015. This Court having noticed that the building application was resubmitted by the 3rd respondent herein, the W.P.No.22850 of 2015

was disposed of directing the respondent Municipality to consider the same and pass appropriate orders as warranted by law. The writ petition filed by the petitioner i.e., W.P.No.12609 of 2015 was closed as no further orders are necessary, since the 3rd respondent has already applied for revised building plan and the same was pending consideration, leaving it open to the petitioner to work out his remedies.

4. The petitioner challenges the building permission granted in favour of the 3rd respondent in pursuant to the direction issued by this Court on resubmission of building application by the 3rd respondent. Against any decision of the Commissioner granting permission, appeal shall lie to the Municipal Council under Section 345 (1) (b) of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Municipalities Act, 1965'). The petitioner has to avail the remedy of appeal but directly filed this writ petition.

5. Learned counsel for the petitioner submits that though the petitioner has alternative remedy of appeal, he has chosen to file the writ petition on the ground that while granting building permission application, the respondent-Municipality was under the impression that there was a direction issued by this Court for granting of such permission.

6. Learned counsel for the 3rd respondent submits that in fact the petitioner has already instituted suit in O.S.NO.140 of 2015 pending on the file of Principal Junior Civil Judge, Cheerla for declaration and Mandatory Injunction and as the suit is pending, the writ petition is not maintainable.

7. Having regard to the provision contained in Section 345 (1) (b) of the Municipalities Act, 1965, it cannot be said that the said remedy of appeal is not effective and efficacious, warranting interference by this Court at this stage. Thus, the writ petition in the present form at this stage cannot be entertained when the petitioner

has an effective and alternative remedy.

8. In view of the above, the writ petition is disposed of leaving it open to the petitioner to avail the remedy of appeal or any other alternative remedy as available in law, aggrieved by the building permission granted in favour of the 3rd respondent. Since the suit is already pending, it is also open to the petitioner to seek appropriate relief from the competent Court.

9. If the petitioner files an appeal, the Municipal Council shall consider the same as expeditiously as possible, preferably within a period of four weeks from the date of presentation of the appeal, after putting the 3rd respondent on notice. As seen from the order passed by this Court, this Court has only directed to consider the application in accordance with law and there was no direction to grant building permission. Therefore, the appellate authority shall consider all the objections as stated by the petitioner. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

13th August, 2015.
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