

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Writ Petition Nos.37161, 37163 & 37175 of 2015

Between:

Smt.Shafiya Begum

... Petitioners

and

-

The State of Andhra Pradesh

rep. by its Principal Secretary

Municipal Admn. and Urban Development Dept.,

Hyderabad and 2 others

...Respondents

Date of Judgment Pronounced: 16-11-2015

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

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 Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment ?

*** The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

+ Writ Petition Nos.37161, 37163 & 37175 of 2015

% Dated 16.11.2015

-

-

Between:

Smt.Shafiya Begum

... Petitioner

and

-

The State of Andhra Pradesh

rep. by its Principal Secretary

Municipal Admn. and Urban Development Dept.,

Hyderabad and 2 others

...Respondents

! Counsel for the petitioners: Mr.N.Jayasurya

^ Counsel for respondent No.1: AGP for Municipal Administration (AP)

^ Counsel for respondent No.2: None appeared

^ Counsel for respondent No.3: AGP for Revenue (AP)

<GIST:

>HEAD NOTE:

? Cases cited:

1981 (1) SCC 664

(2012) 13 SCC 14

(1998) 6 SCC 538

(1993) 3 SCC 259

(1998) 7 SCC 84

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition Nos.37161, 37163 & 37175 of 2015

Dated 16.11.2015

-

WP.No.37161/15

Between:

Smt.Shafiya Begum

... Petitioner

WP.No.37163/15

Shaik Nayab Rasool

... Petitioner

WP.No.37175/15

Between:

Smt.Shafiya Begum

... Petitioner

and

-

The State of Andhra Pradesh

rep. by its Principal Secretary

Municipal Admn. and Urban Development Dept.,

Hyderabad and 2 others

...Respondents

Counsel for the petitioners: Mr.N.Jayasurya

Counsel for respondent No.1: AGP for Municipal Administration (AP)

Counsel for respondent No.2: None appeared

Counsel for respondent No.3: AGP for Revenue (AP)

The Court made the following:

Common Order :

The petitioners in these three Writ Petitions have common grievance *viz.*, that respondent No.2 has issued three separate but identical notices, dated 06-11-2015, directing them to remove the shops constructed by them in Survey No.1964 of Atmakuru Village.

The only ground on which the petitioners have questioned the impugned notices is that before issuing them, respondent No.2 has not given them an opportunity to showcause why the shops shall not be removed.

Mr.Md.Saleem, learned Standing Counsel for Municipalities appearing for respondent No.2 submitted that before issuing the impugned notices, survey was done by the Revenue Department, which revealed that the petitioners have constructed the shops over the land belonging to Atmakur Municipality and that Section 192 of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act'), does not stipulate issue of show cause notice.

Section 192 of the Act reads as under:

Removal of encroachments:

1. The Commissioner may cause to be removed or altered -
 - (a) any projection, encroachment or obstruction (other than a door, or gate or a necessary access thereto, or bar or ground floor windows) situated against, or in front of such premises and in, or over any street;

(b) any article whatsoever, hawked or exposed for sale in a public place or in any public street in contravention of the provisions of this Act, together with any vehicle, package, box or any other thing in or on which such article is placed.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction under clause (a) of sub-section (1) has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

(3) No decision made or order passed or proceeding taken by the Commissioner effecting removal of encroachments shall be called in question before a civil Court in any suit, application or other proceeding and no injunction shall be granted by any court in respect of any proceeding taken by the Commissioner.”

A plain reading of Section 192 as reproduced above would no doubt show that it does not envisage a prior showcause notice before the Commissioner exercises his power of directing an alleged encroacher to remove the structure raised by him. However, the law is well settled that before any action, which results in serious adverse consequences to a person, is taken, such person is entitled to a notice and even if a statutory provision does not envisage issuance of such a notice, such requirement must be read into the statutory provision. In this regard, I am fortified by the decisions of the Apex Court, some of which are referred to hereunder.

In **Swadeshi Cotton Mills vs. Union of India**, the Supreme Court held:

“Natural Justice, ultra vires, public policy, or any other rule of interpretation must conform, grow and be tailored to serve the public interest and respond to the demands of an evolving society. The principles of natural justice are now considered so fundamental as to be ‘implicit in the concept of ordered liberty’ and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice.”

In **Manohar vs. State of Maharashtra and another**, the Apex Court held as under:

“The principles of natural justice have to be read into the provisions of Section 20 (2) of the Right to Information Act, 2005. No person can be condemned unheard. ... It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20 (2).

Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.”

In **Uptron India Limited vs. Shammi Bhan and another**, the Supreme Court has reiterated the principle that the principles of natural justice, which have to be read into the offending clause, must be complied with and the employee must be informed of the grounds for which action was proposed to be taken against him for overstaying the leave.

In D.K.Yadav Vs. J.M.A.Industries Limited and Punjab National Bank vs. Kunj Behari Misra, the Supreme Court has affirmed this salutary principle.

In the light of the above settled legal position, the impugned notices are quashed. Respondent No.2 is left with the liberty to issue showcause notices to the petitioners and after considering the explanation that may be filed by them within the stipulated time, take a fresh decision.

All the three Writ Petitions are, accordingly, allowed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 16th November, 2015

Note: L.R.Copies to be marked.

(B/o)

LUR