

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION NO:18323 OF 2010

ORDER:

1. This writ petition is filed seeking to declare the impugned notice bearing RC No.29/2010 dated 17.7.2010 issued by the respondent under Section 102 of the A.P. Panchayat Raj Act, 1994, as arbitrary and illegal and consequently, to set aside the same.

2. The impugned notice was issued directing the petitioner to remove Palmyra trees and haystack within three days from the date of receipt of notice.

3. The grievance of the petitioner is two fold, the first of which is that since the respondent herein was impleaded as a party to the Civil Suit O.S.No.52 of 2008 filed by him for declaration, the notice impugned here was issued by the respondent with a mala fide intention. Secondly, it is the grievance of the petitioner that as the civil suit is pending with regard to the property, in which the trees are situated, the respondent-authority should not have issued the notice impugned herein.

4. The respondent filed a counter stating that there is no mala fide intention in issuing the notice impugned, and even though the civil suit is pending between the parties, being the authority, the Grampanchayat can issue notice invoking the provisions under Section 102 of the Panchayat Raj Act. Further, it is stated in the counter that in case the petitioner is aggrieved by the notice impugned, he is at liberty to avail an alternative remedy that is available under the provisions of Section 128 of the Panchayat Raj Act.

5. Heard and perused the material available on record.

6. Having regard to the facts and circumstances of the case, without expressing any opinion on the merits of the case, the writ petition is disposed of with the following directions:

a) The petitioner is at liberty to prefer an appeal, if so desired, advised before the appropriate authority under Section 128 of the Panchayat Raj Act, within a period of 30 days from the date of receipt of a copy of this order.

b) On such appeal being filed, the authorities concerned shall dispose of the same as expeditiously as possible.

c) It is made clear that the interim order passed by this Court on 28.7.2010 while issuing notice before admission of the writ petition, shall continue till the disposal of the appeal, if any filed within the stipulated time. It is further made clear that the appellate authority concerned shall decide the issue in accordance with law, without being influenced by this order.

No order as to costs. Consequently, the miscellaneous petitions pending, shall stand closed.

Justice Raja El

Date:19.1.2015
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