

PHONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 10149 OF 2012

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Between:

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Saraswathi Sishu Vidhya Mandir,
Miryalaguda, Nalgonda District. ...Petitioner

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And

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Miryalaguda Municipality,
Miryalaguda, Nalgonda District and another. ... Respondents

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Date of Judgment pronounced: 03.08.2015

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Submitted for Approval:

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The Hon'ble Sri Justice A.Rajasheker Reddy

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1. Whether Reporters of Local newspapers
May be allowed to see the Judgments? Yes/No

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

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3. Whether His Lordship wish to see the fair
Copy of the Judgment? Yes/No

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 10149 of 2012

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ORDER :

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The Petitioner society established High School for imparting education in Telugu Medium from classes I to X at Miryalaguda and it is recognized by the Government of Andhra Pradesh. The petitioner society purchased Ac.1.30 guntas of land through registered sale deed in the year 1979 from Bantu Ramulu. One Idukulla Satyanarayana is Secretary of the Saraswathi Shishu Mandir Society and the owner of the land in Sy.No.45, who left 18 feet width road from the Municipal Public Road to approach the school exclusively meant for access to the school. While so, the 2nd respondent, though has no right of access from the above 18 feet school road, illegally encroached the same by opening the windows towards the road and sunshades. To stop the illegal encroachment, the petitioner has erected a gate before entrance of the school on its premises. However, the 2nd respondent

interfered with the construction of gate and filed suit for mandatory injunction in O.S.No.273 of 2011 along with I.A.No.390 of 2011 for grant of temporary injunction, on the file of the Principal Junior Civil Judge, Miryalaguda. The interlocutory application was dismissed by the trial Court. The 2nd respondent suppressing the fact of pendency of the civil suit, filed W.P.No.1576 of 2012 seeking a direction to the 1st respondent herein for removal of the construction of pillars and gate of petitioner-society, which was disposed of on 25.01.2012. Basing on the orders passed by this Court in the writ petition, the first respondent got issued impugned notice dated 15.03.2012 against the petitioner-society for removing the alleged encroachment within three days, without issuing any notice to the petitioner-society. The petitioner-society got issued reply to the first respondent through his counsel on 17.03.2012. Though this Court directed the first respondent to dispose of the representation of the petitioner-society in accordance with law, without considering the same, impugned orders have been passed straight away. Aggrieved by the same, the present writ petition is filed.

2. Counter affidavit is filed by the first respondent denying the averments made in the affidavit filed in support of the writ petition stating that in pursuant to the orders passed by this Court in W.P.No.1576 of 2012, this respondent issued impugned notice dated 15.03.2012 directing the petitioner to remove the encroachment as per the provisions under Section 192 of the A.P.Municipalities Act, 1965. Without submitting any ownership documents over the 18 feet road, the petitioner is trying to protect the encroachment on the road.

3. Counter affidavit is also filed by the 2nd respondent denying the averments in the writ affidavit stating that the layout in respect of Sy.No.40 is different from the layout in respect of the land in Sy.No.45. The petitioner's school is situated in Sy.No.40 and his plot is situated in Sy.No.45, situated at Miryalaguda Town and Mandal. He further submits that he filed O.S.No.273 of 2011 on the file of the Principal Junior Civil Judge, Miryalaguda along with interim application for temporary injunction against the petitioner. The injunction petition filed by him was dismissed and against the same, CMA is filed and same is pending. This respondent also filed W.P.No.1576 of 2012 and same was disposed of by this Court on 25.01.2012 directing the first respondent to consider the representation of the petitioner in accordance with law. The petitioner, instead of removing the encroachment made by the petitioner on the 18 feet public road in pursuant to the impugned notice, filed the present writ petition on the ground that no show-cause notice was issued calling for any explanation before issuing the impugned notice. In spite of giving notice to

the petitioner, he failed to produce any documents showing ownership details with regard to 18 feet road and sought for dismissal of the writ petition.

4. A perusal of the impugned notice No.MM/TP-I/2861/2012, dated 15.03.2012, it is suffice to state that the petitioner has not been given any prior notice and straight away, the first respondent passed impugned order directing the petitioner-society to remove the encroachments. It is the case of the petitioner that he has purchased the land by virtue of registered sale deed and made constructions. Though the petitioner has issued reply dated 17.03.2012 to the impugned notice dated 15.03.2012, the same has not been considered by the first respondent before issuing the impugned notice.

In view of the same, the impugned notice dated 15.03.2012 is set aside. However, it is open for the respondent to issue notice to the petitioner and petitioner can submit explanation. Thereafter, the first respondent may consider the same and after giving an opportunity of hearing to the petitioner, take appropriate action, in accordance with law. Till then, *status quo* obtaining as on today shall be maintained.

With the above direction, this writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand disposed of.

03.08.2015.
KVS

A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 03-08-2015

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