

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

-

WRIT PETITION No.6420 of 2012

ORDER:

-

This writ petition is filed to declare the impugned memo No.625/2011-B1(Pts), dated 30-11-2011 issued by the 2nd respondent and consequential show-cause notices dated 05-12-2011 and 23-12-2011 issued by the 3rd respondent as illegal and arbitrary.

The petitioner company purchased an extent of Ac.0-36 guntas in Sy.No.177 situated at Somaram Village, Medchal Mandal, Ranga Reddy District vide registered document NO.496, dated 19-11-2009 and applied for permission with plan to the 3rd respondent-Gram panchayat. It is stated that the 3rd respondent granted permission vide letter dated 05-05-2010 for construction of shed over an extent of 988.2 square meters in Sy.No.177 of Suraram village by imposing certain conditions. It is also stated that the petitioner has paid an amount of Rs.78,750/- by way of challan dated 25-01-2011 for conversion of said land into non-agricultural purpose. The General Manager, District Industries Centre, Ranga Reddy has also given "No objection" for establishment of petitioner's Manufacturing Enterprise. Electricity connection was also granted by the Divisional Engineer (Operation), Medchal (Central Power Distribution Company) and the plan was approved under the Factories Act. It is also stated that the petitioner paid another amount of Rs.50,173 to the Grampanchayat towards approval building permission. It is stated by the petitioner that the petitioner addressed a letter to the Commissioner, HMDA on 05-09-2011, which was received on 06-09-2011. Meanwhile, the

panchayat Secretary of the 3rd respondent issued notice on 05-12-2011 with an intimation that the District Panchayat Officer vide his proceedings in Memo No.625/2011-B1(Pts), dated 30-11-2011 cancelled the permissions granted by the gram panchayat . It is also alleged that the petitioner has to obtain technical sanction from the HUDA as per G.O.Ms.No.408 HM&ED before starting construction and directing the petitioner to show cause why the building permissions should not be cancelled.

It is also stated that the Special Deputy Collector and Revenue Divisional Officer, Ranga Reddy, East Division issued proceedings dated 13-12-2011 issuing permission for conversion of the agriculture land into non-agriculture purpose. The petitioner also filed his explanation dated 14-12-2011 in response to the notice dated 05-12-2011 stating that the petitioner has obtained permission from gram panchayat by paying requisite fee. Without considering the explanation filed by the petitioner, the 3rd respondent again issued proceedings dated 23-12-2011 stating that the building permission obtained by the petitioner is contrary to Section 121 of A.P.Panchayat Raj Act and asked the petitioner to show cause why the constructions should not be demolished. Aggrieved by the same, the present writ petition is filed.

A counter is filed by the 3rd respondent admitting that the petitioner is the owner of land to an extent of Ac.0-35 guntas in Sy.No.177 of Somaram Village, Medchal Mandal and it was granted permission for construction of a residential building but not commercial. It is also stated that the 3rd respondent is competent to grant permission only for ground plus two floors that too for residential houses. The Panchayat Secretary is not competent to grant permission for commercial buildings. It is also admitted that the petitioner obtained land conversion proceedings from the Revenue Divisional Officer, (East), Ranga Reddy District on 13-12-2011 i.e. after obtaining permission from the grampanchayat. It is stated that the 3rd respondent-grampanchayat is within the limits of HMDA, the

HMDA has to grant permission for construction of godown. The gram panchayat issued a show-cause notice on 05-12-2011, but this petitioner submitted his explanation on 14-12-2011 after passing final orders by the Gram Panchayat on 13-12-2011.

It is further stated that the petitioner applied for HMDA permission on 05-09-2011 that itself shows he has not obtained any approval from the competent authority as on the date of application to the gram panchayat. The Gram Panchayat issued show-cause notice on 05-12-2011 basing on the memo issued by the District Panchayat Officer on 30-11-2011, but the petitioner failed to submit his explanation within time, the grampanchayat passed final order on 13-12-2011. After that, the gram panchayat issued another notice on 23-12-2011 for demolition of illegal construction. Hence, sought for dismissal of the writ petition.

Learned counsel for the petitioner submits that another show-cause notice was issued on 05-12-2011 and even before expiry of seven days time, the impugned order dated 30-11-2011 is passed that too basing on the memo issued by the District Panchayat Officer- the 2nd respondent. He also submits that amounts were paid for grant of building permission. Without considering the same in proper perspective, impugned orders have been passed.

Heard Sri G.Narender Reddy for R-3 Grampanchayat.

It is to be seen that the memo issued by District Panchayat Officer is without notice to the petitioner. Straight away, the 2nd respondent directed the 3rd respondent by way of impugned memo dated 30-11-2011 to demolish the constructions of the petitioner. Even before the expiry of seven days given in the notice dated 05-

12-2011, final order has been passed on 30-11-2011 and followed by another notice for demolition on 23-12-2011. A reading of impugned memo

dated 30-11-2011 goes to show that it is violation of principles of natural justice directing the 3rd respondent to take steps for demolition. Though the District Panchayat Officer is the 2nd appellate authority, he cannot straight away issue notice to the 3rd respondent for taking action. In view of the same, the impugned memo dated 30-11-2011 is set aside.

Since the impugned memo dated 30-11-2011 is set aside for violation of principles of natural justice and since the petitioner submitted his explanation, the respondent shall consider the same in accordance with law after giving opportunity of hearing to the petitioner and take appropriate action in accordance with law. It is open for the petitioner to approach appropriate authority to obtain permission and the same shall be considered in accordance with law. Till then, status quo as on today shall be maintained.

Accordingly, the writ petition is allowed. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY,J

06-10-2015

Nvl

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.17618 of 2014

Date: 02.07.2014

Nvl