

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.2196 OF 2010

ORDER:

This writ petition is filed seeking to issue a writ of *Mandamus* to declare the notice in Letter No.GPP/60/2009, dated 14.12.2009, issued by respondent No.3 as illegal and arbitrary.

2. Case of the petitioner is that he is a permanent resident of Peerzadiguda Village, Ghatkesar Mandal, Ranga Reddy District and he is having landed properties in that village. He obtained permission for construction of 21 shops in ground and first floors in Sy.No.42 of Peerzadiguda Village in the year 1981 vide Permit No.98/1981 dated 09.04.1981. The said permission was renewed on 16.06.1986. He gave the existing shops for rent and in some shops, there exists T.V.S. show room, hotel and medical shop. Other shops are running in the first floor. He constructed six mulgies and the construction of six mulgies was incomplete due to some financial constraints. Again, when he started completion of the work for the unfinished structures, respondent No.2, at the instance of Sarpanch, was objecting the construction work and threatening to demolish the structure. Immediately, he informed respondent No.3 about the permission and the plan. He is paying property tax for three house numbers i.e., H.No.3-92, 3-93 and 3-94 in Survey No.42 of Peerzadiguda Village. He is paying the property tax for the last 24 years to the Gram Panchayat. He paid the property tax for the above three house numbers for the year 2010 also. But, respondent No.3 issued a notice in Letter No.GPP/60/2009, dated 14.12.2009, directing the petitioner to stop the construction immediately otherwise, they will demolish the structure as per Section 121 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, "the Act"). On 15.12.2009, the petitioner appeared before respondent No.3 and explained in person by showing the original plan. But, he was not permitted to complete the unfinished construction and respondent No.3 intentionally came to his premises along with twenty people in a tractor and tried to take his equipment, which was available in the premises.

Immediately, respondent No.3 lodged a complaint with the police, Uppal under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, who in turn conducted an enquiry and found that it is a false case and closed the complaint. Respondent No.3, having grudge on the petitioner, started harassing him and issued the present impugned notice directing him to stop the work in premises Nos.3-92, 3-93 and 3-94 of Peerzadiguda Village. Hence, he filed the present writ petition.

3. Counter-affidavit is filed by respondent No.3 contending that the petitioner raised unauthorized construction on the existing house which is illegal and in violation of the Rules of G.O.Ms.No.67 dated 26.2.2002. In fact, the petitioner has to obtain permission from the Hyderabad Metropolitan Development Authority (H.M.D.A.) through Gram Panchayat because the illegal construction being raised by the petitioner is adjacent to the National Highway No.202. The petitioner ought to have submitted his explanation to the impugned notice instead of filing the present writ petition without any substantial ground. The writ petition is also liable to be dismissed on the ground that the petitioner has not availed the remedy available under the Act.

The petitioner has to approach H.M.D.A. through the local authority for obtaining permission for construction of the building. In spite of the notice, the petitioner, without informing or without obtaining any permission, high handedly started construction on the above mentioned house.

The permission obtained by the petitioner was only to the house bearing Nos.3-92, 3-93 and 3-94 but not for the new construction being raised by him and it is also pertinent to mention here that the property tax paid by the petitioner is only to the existing house, but not for the illegal construction being raised by him.

The petitioner has also threatened the staff of Gram Panchayat, who went to his premises to serve the notice. In fact, a complaint has been given on 12.10.2009 to the Station House Officer, Uppal for taking action against the petitioner. The petitioner is high handedly doing the work in the above said premises.

The petitioner would have approached the District Panchayat Officer by filing an appeal under Section 128 of the Panchayat Raj Act. He can also file an appeal before the Gram Panchayat on the notice issued by this respondent first. Without availing the remedies under the Act, the present writ petition has been filed as if he possessed all the relevant permission for his illegal construction and proceeding with the construction is absolutely illegal and violation of G.O.Ms.No.408 dated 8.8.1991 and G.O.Ms.No.67 dated 26.2.2002 and in violation of the provisions of the Act and hence, prayed to dismiss the writ petition.

4. Heard Sri K.Durga Prasad, learned counsel appearing for the petitioner, learned Government Pleader for Panchayat Raj and Rural Development appearing for respondent Nos.1 and 2 and Sri G.Narendar Reddy, learned Standing Counsel appearing for respondent No.3 Gram Panchayat.

5. In this case, it is to be seen that while admitting the writ petition on 09.02.2010, this Court passed the following interim order:

“Pending further orders, it is directed that the petitioner can attend to finishing works, if any, in the existing building. However, he shall not be entitled to raise any pillar or put the slab. The Gram Panchayat is also entitled to levy property tax for such of the premises that are kept in use and to proceed against any structure, which is made unauthorisedly.”

As per the impugned notice, dated 14.12.2009, the petitioner has not obtained any permission either from the Gram Panchayat or from H.M.D.A. and making construction illegally in the first floor. Now, the petitioner asserts that he has obtained permission for construction of the structures. The respondent Gram Panchayat also admits that the petitioner obtained permission for construction of house in the year 1981 and the same was renewed in the year 1986, but alleges that the petitioner is making construction in violation of the building permission granted to him and also the interim order passed by this Court. If the petitioner has made any

unauthorised construction, the respondent Gram Panchayat should have given a notice to him and after following due process of law, it should have taken action against him. Now, the respondent Gram Panchayat state that the petitioner could have filed explanation to the impugned notice. In view of the same, it is open for the respondent Gram Panchayat to issue fresh notice to the petitioner indicating the deviations made by him at the time of construction and the petitioner can file an explanation to the same. After considering the explanation, the competent authority shall take appropriate action in accordance with law.

6. With the above direction, the Writ Petition is disposed of. However, it is open for the respondent Gram Panchayat to take action against the petitioner if he makes any unauthorised construction without obtaining proper permission. There shall be no order as to costs.

7. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.RAJASHEKER REDDY

Date: 30.09.2015
AMD

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
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