

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.9597 of 2012

Date: 08-06-2015

Between:

Arvapalli Nagalakshmi

.. Petitioner

And:

The Vijayawada Guntur Tenali and Mangalagiri
Urban Development Authority, represented by its
Vice Chairman, Vijayawada and another

..... Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.9597 of 2012

ORDER:

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This writ petition is filed questioning the action of the 2nd respondent in issuing the order in Rc.No.160/2011, dated 19-10-2011, alleging that the construction of residential building made by the petitioner in an extent of 227.69 square meters situated in R.S.No.222/2, Penamaluru Village and Mandal, Krishna District is in deviation of approved plan with respect to setbacks and thereby directing the

petitioner to demolish the said portion of the building without issuing any notice.

2. The case of the petitioner is that she is absolute owner of the plot in an extent of 227.69 square meters situated in R.S.No.222/2, Penamaluru Village and Mandal, Krishna District and when she intended to construct a residential building in the said site, she obtained necessary approved plan from the 2nd respondent-Gram Panchayat vide proceedings in D.Dis.No.84/2011, dated 31-03-2011 and completed the said construction strictly in accordance with the approved plan without any deviation. It is stated that the 2nd respondent-Gram Panchayat issued impugned notice in Rc.No.160/2011 dated 19-10-2011 alleging that the petitioner has constructed the said building in violation of approved building plan and directed her to remove the said deviated portion of the building. Aggrieved by the same, the present writ petition is filed.

3. The 2nd respondent filed counter stating that one Muppalla Badari Narayana filed a complaint in "Prajavani" before the District Collector to take action against deviations in constructions made in the village approved by the Panchayat Secretary, and accordingly, the 1st respondent visited the Gram Panchayat on 27-09-2011 and verified the plans approved by the then Panchayat Secretary and inspected the buildings along with the staff of Gram Panchayat and found the petitioner and some others constructed the buildings deviating the approved building plans. It is stated that the 1st respondent directed the Panchayat Secretary on

30-09-2011 to take necessary action against the persons for making constructions deviating the approved plan and in pursuance of the said directions, the 2nd respondent issued notices to the petitioner along with others on 19-10-2011 and requested the 1st respondent to depute technical persons to mark the deviations. It is further stated that the District Panchayat Officer requested the 1st respondent through Divisional Panchayat Officer to provide technical assistance for marking to remove the deviations. Pursuant to the said request, the 1st respondent addressed a letter to the Panchayat Secretary on 14-03-2012 to fix a date to mark the deviated portions and on the same day, the Panchayat Secretary requested the 1st respondent to depute technical persons on 24-03-2012 and also addressed a letter to the Station House Officer on 20-

03-2012 to provide police assistance to mark the deviated portion on 24-03-2012. It is further stated that the authorities, after marking the deviations made to the approved plans, will issue notice to the petitioner calling for explanation and action will be initiated according to law and rules. The petitioner filed the writ petition only with an apprehension and the 2nd respondent sought for dismissal of the writ petition.

4. Heard the learned counsel for the petitioner, Sri Ravi Cheemalapati, learned standing counsel for the 2nd respondent-Gram Panchayat, and Smt. K. Mani Deepika, learned standing counsel for the 1st respondent.

5. Learned counsel for the 1st respondent on instructions produced Para-wise remarks wherein it is stated that since the petitioner has constructed the building in deviation of approved building plan by the Gram Panchayat, an inspection was made and basing on the deviations made by her, the 2nd respondent issued notice of demolition dated 19-10-2011, but the petitioner has not submitted her explanation to the said notice and also not removed the deviated portion and sought for dismissal of the writ petition.

6. Though the impugned notice dated 19-10-2011 goes to show that the same was issued straight away to the petitioner to remove the deviated portion of the construction made in violation of the approved plan, the said notice has been issued without issuing any prior notice. But in the counter, it is clearly stated that the 2nd respondent issued notice to the petitioner calling for his explanation and nothing was placed that the 2nd respondent issued prior notice before the impugned proceedings. It appears that the impugned notice of demolition is issued without any prior notice, which is grossly in violation of principles of natural justice. However, it is suffice to say that interests of justice would be served, if the impugned notice dated 19-10-2011 can be treated as show cause notice to the petitioner.

7. In view of above facts and circumstances, the impugned notice of demolition dated 19-10-2011 issued to the petitioner is treated as show cause notice, in response to which, the petitioner can submit her explanation within a period of four (4) weeks from the date of this order and on submission of such explanation, the 2nd respondent may consider the same and pass appropriate

orders thereon in accordance with law. In case if the petitioner does not submit her explanation to the said notice dated 19-10-2011 as ordered, it is open for the respondent authorities to take appropriate action in accordance with law.

With the above directions, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 08-06-2015

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