

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**THURSDAY, THE FIRST DAY OF OCTOBER TWO THOUSAND AND
FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.32273 of 2015

Between:

Y. Subramanyam, S/o. Late Y. Siddaiah,

Age: 48 years, Occ: Labour,

R/o.D.No.6/973-A, Nunevaripalli,

Rajampet Mandal, YSR Kadapa District.

.. Petitioner

AND

The State of Andhra Pradesh,

Rep. by its Principal Secretary,

Municipal Administration and Urban

Development Department,

A.P. Secretariat, Hyderabad & 2 others

.. Respondents

The Court made the following:

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ORDER:

According to the petitioner, the mother of the petitioner applied for building permission for construction of ground plus first floor in Door No.6/973-A and permission was granted on 18.03.2015. However, immediately thereafter, i.e., on 30.04.2015, his mother expired and after her death, the petitioner has taken up construction of the building. While so, the petitioner was served notice, dated 29.05.2015, by the Commissioner, Rajampet Municipal Office (2nd respondent) calling upon the petitioner to show cause as to why action should not be taken since the 2nd respondent Municipality was informed that the building permission was obtained by giving false information. The petitioner filed his explanation to the said show cause notice on 03.06.2015. Thereupon, orders were passed on 08.06.2015 by the 2nd respondent. Aggrieved thereby, the petitioner earlier filed W.P.No.17016 of 2015.

2. Having regard to the fact that against the decision of the 2nd

respondent, appeal lies to the Municipal Council under Section 345(1)(c) of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act'), the w.p.No.17016 of 2015 was disposed of by order, dated 15.06.2015, directing to treat the proceedings, dated 08.06.2015, as show cause notice, consider the explanation filed by the petitioner and also to consider additional explanation that may be filed by the petitioner. Petitioner was also granted liberty to file additional explanation. Accordingly, additional explanation was filed by the petitioner on 27.06.2015. After receiving explanation, the competent authority fixed the personal hearing on 29.07.2015, wherein petitioner has attended. The Commissioner has passed orders on 05.08.2015 cancelling the building permission and issued further directions to remove the illegal construction made within a period of one week. Aggrieved thereby, petitioner filed appeal under Section 345(1)(c) of the Act.

3. The petitioner filed W.P.No.26395 of 2015 challenging the inaction on the appeal filed by the petitioner. When the matter was taken up for consideration, learned Standing Counsel as well as the learned Government Pleader submitted that against the decision of the Commissioner, appeal lies to the Municipal Council, whereas the petitioner preferred appeal before the Regional Deputy Director, Town and Country Planning at Anantapur. Having regard to the said submission, the writ petition was disposed of granting liberty to the petitioner to prefer appeal under Section 345(1)(c) of the Act to the Municipal Council.

4. In terms thereof, the petitioner preferred appeal to the Municipal Council, Rajampet Municipality, Rajampet, YSR Kadapa District (3rd respondent). Since the Municipal Council is not functioning, the Special Officer/Revenue Divisional Officer is discharging functions of the Municipal Council. The Special Officer passed orders on 08.09.2015 on the appeal filed by the petitioner holding that he is not competent to pass stay orders or final orders on the appeal filed by the petitioner and directed the Commissioner to take further action in the matter by enclosing the appeal filed by the petitioner. Aggrieved thereby, this writ petition is filed.

5. The petitioner filed W.P.No.32086 of 2015 once again challenging the proceedings of the Commissioner, dated 05.08.2015, whereas, by then his appeal was already considered and orders are passed by the Revenue Divisional Officer, who is acting as the Special Officer, Municipal Council, Rajampet Municipality, YSR Kadapa District (3rd respondent). Therefore, that writ petition is dismissed as withdrawn and the petitioner moved this writ petition.

6. The statute empowers the appellate authority to consider the appeal against the decision made by the Commissioner. When there is no Municipal Council and in the absence of Municipal Council, the Special Officer is appointed, the Special Officer discharges all the functions of the Municipal Council and for all practical purposes, he is the Municipal Council, wherever power is vested in the Municipal Council under the A.P. Municipalities Act, 1965. While that being so and when the petitioner have preferred an appeal to exercise powers under Section 345(1)(c) of the Act on the orders of the Commissioner, the Special Officer grossly erred in not considering the appeal and holding that he is not competent to pass the orders and remitting the matter to the same authority. This amounts to abuse of power and authority and careless in dealing with statutory appeals.

7. Having regard to the statutory mandate, the proceedings of the Revenue Divisional Officer/Special Officer of the Rajampet Municipality, YSR Kadapa District (3rd respondent), dated 08.09.2015, are set aside and the matter is remitted to the Special Officer of Rajampet Municipality, YSR Kadapa District, to consider the appeal filed by the petitioner against the decision of the Commissioner of Rajampet Municipality, YSR Kadapa District (2nd respondent) dated 05.08.2015, on its merits including the application filed by the petitioner for grant of interlocutory orders, as expeditiously as possible, preferably within a period of two (2) weeks from the date of receipt of copy of the order. Till the final orders are passed by the Special Officer, no coercive action shall be taken against the petitioner.

8. With the above observations, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 1st October, 2015

Note: Issue C.C. in three (3) days.

(B/o.)

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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Date: 1st October, 2015

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