

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

* * * *

-
WRIT PETITION No.1460 of 2015
&
WPMP.No.10150 of 2015

BETWEEN

Share Medical Care Society.

... PETITIONER

AND

The State of Telangana, Rep. by its Principal Secretary, Revenue,
Secretariat, Hyderabad and another

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 20.08.2015

-
SUBMITTED FOR APPROVAL:

-

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

- | | | |
|----|---|----|
| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | No |

-

-

-

ORDER:

Petitioner questions the impugned memo dated 21.01.015 issued by the third respondent. The said memo was preceded by a show cause notice No.E/655/2014 dated 24.11.2014 alleging that the petitioner's compound wall and fencing is within the FTL area and petitioner gave reply to the said notice on 18.12.2014 stating in detail that the constructions are outside the FTL area. However, when the impugned memo was issued, while referring to explanation of the petitioner under reference No.6, certain portions thereof are noticed without adjudicating on the issues raised. The impugned memo was passed rejecting the petitioner's explanation without dealing with the specific contentions of the petitioner in the explanation.

2. When the writ petition was taken up for admission on 30.01.2015, the said deficiency was noticed and hence, while issuing notice before admission, interim stay of further proceedings was granted.

3. The official respondents have filed counter affidavit along with vacate stay petition stating in detail the reasons in support of the impugned memo and in the counter affidavit, it appears that the respondents have considered the explanation of the petitioner and its merits.

4. However, the order impugned itself does not consider and deal with the issues raised by the petitioner in the explanation. It is well settled that counter affidavit cannot improve the impugned order or supply reasons, which are lacking in the impugned order.

(see ***MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER*** [(1978) 1 SCC 405]). In view of that, therefore, the said counter affidavit cannot be looked into to improve the impugned

order.

5. In the circumstances, there is no option but to set aside the impugned memo and remand the matter back for fresh consideration to the third respondent. The third respondent shall at least now consider the explanation filed by the petitioner and deal with the contentions of the petitioner therein and then pass appropriate orders. Before undertaking the aforesaid exercise, the third respondent shall also issue notice to the petitioner fixing a date on which such explanation will be considered so that, if the petitioner so desires, he can appear in person before the third respondent and support his contentions in the explanation.

The writ petition is accordingly allowed.

-
WPMP.No.10150 of 2015:

6. Two third party petitioners seek to come on record as respondents 4 and 5. While the first petitioner herein claims to be owner of an extent of land, the second petitioner herein claims to be a social worker and resident of Pudur village. The petitioners herein claim that on the complaint made by Ayacutdars, the then Mandal Revenue Officer got the FTL fixed through irrigation department and they claim that they are affected and are interested in maintaining the FTL level. Hence, the petitioners are opposing the constructions made by the petitioners.

7. I have heard the learned counsel for the proposed parties.

8. When the impugned order itself is set aside, as above, it is not necessary to separately consider the application for impleadment.

The application is dismissed as the proposed parties are neither necessary nor proper parties.

In the result, the writ petition is allowed and WPMP.No.10150 of 2015

is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

August 20, 2015
DSK