

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.40658 OF 2014

ORDER :

This petition is filed for a writ of *Mandamus* declaring the action of the respondent in issuing proceedings vide Roc.No.2294/2014/G1, dated 11.12.2014, as illegal and arbitrary.

The case of the petitioner is that he is the owner of land admeasuring an extent of 108.52 Sq. Mtrs. situated in Survey No.453-C of Guntakal Village, bearing D.No.18/795-H2-2, Pottisreeramulu Road, Guntakal, Anantapuram District having purchased the same by virtue of sale deed dated 31.10.2011. After purchase of the property the petitioner applied for building permission and the same was approved by the respondent Corporation on 09.04.2012. Thereafter, when the petitioner demolished existing building, the adjacent neighbour started interfering with his possession of the plot. As such, the petitioner filed OS.No.28/2013 for grant of permanent injunction along with IA.No.68/2014 seeking temporary injunction and the Civil Court granted temporary injunction on 31.10.2014 and the same has become final. Thereafter, when the petitioner recommenced the construction the respondent officials started interfering with the construction and petitioner immediately submitted representation dated 24.11.2014 stating that after approval of the plan only, he is proceeding with the construction and that because of the litigation with the third parties he stopped construction for some time and recommenced the work after obtaining the orders from the Civil Court. He also stated in the representation that he would complete the construction work within the period prescribed in the approved plan. But, without considering the said representation the

respondent issued the impugned endorsement dated 11.12.2014 stating that the petitioner has not given any notice regarding commencement of construction, as such permission issued lapsed as per the Rule 24(ix) of G.O.Ms.No.569, M.A&U.D, dated 23.08.2008. Aggrieved by the same, present writ petition is filed.

The respondent filed counter stating that the petitioner has not commenced the work on the ground, within a period of one year after approval of Building Plan dated 09.04.2012 and that petitioner has not issued any notice regarding commencement of work to the respondent, as such permission already issued is lapsed.

Heard both sides.

Petitioner filed IA.No.68 of 2014 in OS.No.28/2013 and obtained injunction from the Civil Court by order dated 31.10.2014 against third parties when they tried to interfere with the petitioner's possession over the subject plot, though the petitioner obtained permission dated 09.04.2012 for construction of house which is the subject matter of this writ petition. The respondent has denied the same though copy of order dated 31.10.2014 granting injunction to petitioner is filed in material papers. Petitioner in his representation dated 24.11.2014 also stated the same. When there is obstruction by the third parties, there is no other go except to file a suit. Petitioner filed suit in the year 2013 and obtained injunction. Validity of construction permission granted to the petitioner dated 09.04.2012 is upto three years and the same has not expired. The provisions regarding grant of construction permission are enacted to see constructions are made in systematic way leaving roads, set backs etc. Even

according to respondent, petitioner obtained permission, but not commenced construction within one year from the date of grant of construction permission, as such validity of permission lapsed. Though validity of permission is for 3 years from the date of grant i.e., upto 08.04.2015, when litigation cropped up petitioner had to file suit and in fact he filed suit in 2013, immediately after obtaining permission and the said permission dated 09.04.2012 is also marked as exhibit A6 in IA.No.68 of 2014. Even if petitioner has not commenced construction within one year from the date of construction permission he cannot be faulted as cropping of litigation is not in his hands. The approach of respondents is too technical for obvious reasons. The clause 5 in the proceedings dated 09.04.2012 that construction has to be commenced within one year cannot be put against petitioner when he is not yet fault. Litigation cropped up which is beyond his control. The way in which the respondent interpreted the clause is unreasonable, arbitrary, illegal, harsh and unconscionable and opposed to Article 14 of the Constitution of India. The action of statutory authorities must be reasonable, fair, just and if found otherwise this court cannot shut its eyes but come to the rescue of the citizen by exercising its extra ordinary equitable jurisdiction under Article 226 of the Constitution of India.

From the above analysis this Court finds that the present case is one in which this Court has to step in and declare the impugned endorsement vide Roc.No.2294/2014/ G1, dated 11.12.2014 as arbitrary and unreasonable and liable to be set aside.

Accordingly, the writ petition is allowed setting aside the impugned endorsement, dated 11.12.2014 issued by the respondent. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending
in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

20.02.2015

t k.