

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.19124 OF 2006

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the 2nd respondent in issuing show cause notice vide R.C.No.5602/90, dated 17.09.2006, as illegal, arbitrary and contrary to the provisions of the A.P.Gram Panchayat Act, 1994 and A.P.Gram Panchayat Land Development (Layout and building) Rules, 2002 and to set aside the same.

The case of the petitioner is that he is the owner of land admeasuring 235.22 Sq.ys., having purchased the same on 27.07.2005 under a registered document. He made an application to construct a building (1+2) to the Gram Panchayat of Kanur Village of Penamalur Mandal, Krishna District on 24.09.2005. Accordingly, the Panchayat Secretary-1st respondent issued building permission vide D.S.No.276/2005, dated 28.10.2005 after obtaining orders from the Vijayawada-Guntur-Tenali-Mangalagiri Urban Development Authority (*for short VGTM*)- 2nd respondent and approved the plan submitted by the petitioner as per the provisions of the A.P.Gram Panchayat land Development (Layout and Building) Rules, 2002 (*for short 'the Rules, 2002*). Thereafter, the petitioner constructed the building upto first floor without any deviations as per the provisions of the Rules, 2002. While so, the 2nd respondent issued impugned show cause notice dated 17.08.2006 under Section 42(1) of the A.P.Urban Areas Development Authority Act, 1975 (*for short 'the Act, 1975*) stating that the construction made by the petitioner is against the plan and the rules. The 2nd respondent also directed the petitioner to submit

written explanation within five days otherwise action would be taken against the petitioner as per Section 42(1) of the Act, 1975. Aggrieved by the same, present writ petition is filed.

The 2nd respondent filed counter affidavit denying that the petitioner has constructed the building upto first floor without any deviations as per the Rules, 2002. It is also stated that the technical staff of the 2nd respondent detected the deviations constructed by petitioner and as such the 2nd respondent issued notice to the petitioner by exercising powers under Section 42(1) of the Act, 1975 on 17.08.2006 asking the petitioner to show cause as to why the deviation/violation portion shall not be removed, within seven days from the date of receipt of the notice. It is also stated that since the petitioner refused to receive the notice, the same was serviced to the petitioner by affixing the same to the wall of the construction. It is further stated that the 2nd respondent again issued notice to the petitioner on 06.09.2006 and that the petitioner has submitted explanation on 14.09.2006 informing that there are no deviations and the construction is as per the sanctioned plan. It is also stated that since Section 42 of the Act, 1975 contemplates removal of the development at the expense of the person who contravened the provisions of this Act or master plan, after following due procedure laid down therein, the 2nd respondent is competent to issue show cause notice to the petitioner for demolition of the building approved as per the A.P.Gram Panchayat Land Development (Layout and Building) rules, 2002. It is further stated that Section 43 of the Act, 1975 empowers the 2nd respondent to stop unauthorized constructions and finally sought for dismissal of the writ petition.

Heard Sri Gopal Das, learned counsel for the petitioner and Smt.K.Mani Deepika, learned Standing Counsel for the 2nd respondent.

Learned counsel for the petitioner submits that when once the Gram Panchayat granted building permission as per the Rules, 2002 and when the petitioner completed the construction as per the sanctioned plan, it is the Gram Panchayat which can issue any notice to the petitioner since it is the authority which has granted permission but not the 2nd respondent. The powers vested to the Gram Panchayat by virtue of A.P.Gram Panchayat Land Development (Layout and Building) Rules, 2002 cannot be divested by the 2nd respondent by issuing the impugned show cause notice. He also relied on the Judgment in ***Thimmareddypalem Gram Panchayat v. District Collector, Ongole*** [\[1\]](#).

On the other hand Smt.K.Mani Deepika, learned Standing Counsel for the 2nd respondent submits that the petitioner in his affidavit admitted that the 1st respondent approved the plan only after obtaining orders from the 2nd respondent, as such, it cannot be said that the 2nd respondent has no power to issue show cause notice. She also submits that as per Section 13 of the Act, 1975, Kanuru Village wherein the subject property is situated is declared as Development area named as Kanuru Zonal Development Plan, as such the 2nd respondent has power to issue notice under Section 42(1) and 43 of the Act, 1975. She further submits that the petitioner has already filed explanation to the show cause notice.

In this case, the admitted fact is that the petitioner himself

admitted in the writ affidavit that the 1st respondent issued approved plan after obtaining orders from the 2nd respondent which itself goes to show that after obtaining orders from the 2nd respondent only the 1st respondent granted building permission. It is not the case of the petitioner that the subject property does not fall under the jurisdiction of the Urban Development Authority. As such, when once the subject property falls under the jurisdiction of the Urban Development Authority, provisions of the A.P.Urban Areas Development Authority Act, 1975 automatically applies.

Section 42(1) and 43 of the A.P.Urban Areas Development Authority Act, 1975. reads as follows;

42.Order or demolition of building:-(1)Where any development has been commenced or is being carried on or has been completed in contravention of the master plan or zonal development plan or without the permission, approval or sanction referred to in Section 13 in contravention or any condition subject to which such permission, approval or sanction has been granted___

(i) in relation to a development area, any officer of the Authority empowered by it in this behalf;

(ii) in relation to any other area within the local limits of a local authority, the competent authority thereof, may in addition to any prosecution that may be instituted under this Act, make an order directing that such development shall be removed by demolition, felling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period being not less than five days and not more than fifteen days from the date on which a copy of the order of removal, with a brief statement of the reasons therefore has been delivered to the owner or that person as may be specified in the order; and on his failure to comply with the order, the officer of the Authority or, as the case may be, the competent authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner or the person at

whose instance the development was commenced or was being carried out or was completed as arrears of land revenue:

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

43. Power to stop unauthorized development: (1) where any development in any area has been commenced in contravention of the provisions of Section 13 or without the permission, approval or sanction referred to in that section or in contravention of any condition subject to which such permission, approval or sanction has been granted_

(i) in relation to development area, the Authority or any officer of the authority empowered by it in this behalf;

(ii) in relation to any other area specified in sub-section (7) of Section 13 within the local limits of a local authority, the competent authority thereof, may in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

In view of Section 42(1) and 43 (1) of the Act, 1975, it cannot be said that the 2nd respondent has no power to issue impugned show cause notice. Further, it is not brought to my notice by the learned counsel for the petitioner that the Rules, 2002 in any way debar the 2nd respondent from issuing show cause notice. Moreover, the petitioner having submitted explanation on 14.09.2006, now cannot turn back and say that the 2nd respondent has no jurisdiction. Further, the Judgment relied on by the petitioner has no application to the present case since it is the question of exercising powers by the 2nd respondent by virtue of powers conferred on it as per the Act, 1975.

In view of the above, I do not see any ground to interdict the

show cause notice issued by the 2nd respondent on the ground of lack of jurisdiction. Any how, though the petitioner already submitted explanation on 14.09.2006, learned counsel for the petitioner wants to submit further explanation to the show cause notice, the petitioner is permitted to submit his further explanation within four weeks from today and thereafter, the 2nd respondent shall consider the same in accordance with law. If the petitioner fails to submit any explanation within the aforesaid period, it is open for the 2nd respondent to take action in accordance with law basing on the earlier explanation submitted by the petitioner. Till then *Status-quo* obtaining as on today shall be maintained by both the parties.

Accordingly, the writ petition is disposed of. 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

31.08.2015
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[\[1\]](#) 2004(7) ALT 852