

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.20443 of 2015

Dated : 07.07.2015

Between:

Mohd. Zameer S/o.Mohd. Subhan,
Aged about 35 yrs, Occu : Private Service,
Tandur, Rangareddy District.

.. Petitioner

And

Municipality, Tandur,
Rangareddy District,
Rep., by Commissioner at Tandur & another.

.. Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

The petitioner is aggrieved by the notice dated 22.06.2015, whereby his building permission earlier granted was revoked on the ground that in accordance with the Government order in G.O.Ms.No.72, MA & UD(G1) dated 20.02.2002, on the open places ear marked for parks, play grounds etc., no building can be constructed.

2. Learned counsel for the petitioner submits that as clarified by the Tahsildar, Tandur, in his letter dated 24.12.2014, it is a Government land assigned to the petitioner and therefore, the objection is not valid.

3. Learned Standing counsel for the respondent-Municipality, submits that against the decision of Commissioner, appeal lies to the Municipal Council under Section 345 (1) (c) of the Andhra Pradesh Municipalities Act, 1965 and without exhausting the remedy of appeal, this writ petition is filed.

4. Learned counsel for the petitioner contends that though the remedy of appeal is available, in the instant case, the order impugned is passed without considering the specific objections raised by the petitioner in his explanation submitted in pursuant to the show cause notice issued on 08.06.2015. In his explanation, the petitioner has clearly stated that the order of the Government in G.O.Ms.No.72 is not applicable as the plot assigned to him was for residential purpose and is not an open place, which is not covered by the provisions of the said G.O.

5. As seen from the order impugned in the writ petition, the commissioner only refers to G.O.Ms.No.72. Though the endorsement on the first page of the representation shows that the representation was received on 10.06.2015, there is no discussion of the explanation filed by the petitioner. Thus, as rightly contended by the learned counsel for the petitioner, the impugned order is liable to be set aside on the ground of non-application of mind in considering the objections.

6. Having regard to the above, the petitioner cannot be compelled to avail the remedy of appeal when the original order is vitiated on the ground of non-application of mind and not considering the objections filed by the petitioner. The impugned order has got severe civil and evil consequences. By virtue of the impugned order the petitioner is prevented from constructing the house on the plot assigned to him by the Government. Therefore, the authority ought to have considered and dealt with the objections raised by the petitioner and assign the reasons. In the absence of reasons, the petitioner

cannot be compelled to go in appeal and since the order is vitiated on this ground, the same is liable to be set aside.

7. Accordingly, the impugned order dated 22.06.2015 is set aside and the matter is remitted back to the Commissioner, Tandur Municipality, for reconsideration and passing orders afresh by duly taking note of the objections filed by the petitioner in the representation dated 10.06.2015. The Commissioner shall pass appropriate orders as warranted by law within a period of two (2) weeks from the date of receipt of a copy of this order, after affording opportunity of personal hearing by duly fixing the date for such hearing with advance intimation.

Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

07th July, 2015.
Rds

P.NAVEEN RAO,J