

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.8367 of 2012

Date: 08-06-2015

Between:

Velivela Sri Rama Rao

.. Petitioner

And:

The Gram Panchayat, represented by its
Panchayat Secretary, Penamaluru Post and Manal
and 5 others

..... Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.8367 of 2012

ORDER:

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This writ petition is filed questioning the action of the 1st respondent in issuing the order in Rc.No.160/2011, dated 19-10-2011 served on the petitioner on 22-03-2012, alleging that the construction of residential house of the petitioner bearing D.No.12-113, Vanthana Down, Penamaluru village and Mandal, Krishna District is in deviation of the approved plan with respect to setbacks and thereby directing the petitioner to demolish the said portion of the building without issuing any notice.

2. The case of the petitioner is that he is absolute owner of residential building bearing D.No.12-113, Vanthana Down, Penamaluru village and Mandal, Krishna District and after obtaining necessary permission from the 1st respondent-Gram

Panchayat, he constructed ground plus two floors and completed the same in accordance with the conditions laid down by the authorities. It is stated that the petitioner is residing in the said building having paid house tax to the said building. It is further stated that the impugned notice in Rc.No.160/2011 dated 19-10-2011 was served on the petitioner on 22-03-2012 alleging that the construction made by him is in deviation of approved plan with respect to setbacks and directed him to demolish the said portion of the building. Aggrieved by the same, the present writ petition is filed.

3. The 1st respondent filed counter stating that one Muppalla Badari Narayana filed a complaint in "Prajavani" before the District Collector to take action against deviations in constructions made in the village approved by the Panchayat Secretary, and accordingly, the 3rd respondent visited the Gram Panchayat on 27-09-2011 and verified the plans approved by the then Panchayat Secretary and inspected the buildings along with the staff of Gram Panchayat and found the petitioner and some others constructed the building deviating the approved plan. It is stated that the 3rd respondent directed the Panchayat Secretary on 30-09-2011 to take necessary action against the persons for making constructions deviating the plan approved and in pursuance of the said directions, the 1st respondent issued notices to the petitioner along with others on 09-10-2011 and requested the 3rd respondent to depute the technical persons to mark the deviations. It is further stated that the District Panchayat Officer requested the 3rd respondent through Divisional Panchayat Officer to provide technical assistance for marking to remove the deviations. Pursuant to the said request, the 3rd respondent addressed a letter

to the Panchayat Secretary on 14-03-2012 to fix a date to mark the deviation portions and on the same day, the Panchayat Secretary requested the 3rd respondent to depute the technical persons on 24-03-2012 and also addressed a letter to the Station House Officer on 20-03-2012 to provide police assistance to mark the deviation portion on 24-03-2012. It is further stated that the authorities, after marking the deviations made to the approved plans, will issue notice to the petitioner calling for explanation and action will be initiated according to law and rules. The petitioner filed the writ petition only with an apprehension and the 1st respondent sought for dismissal of the writ petition.

4. Heard the learned counsel for the petitioner, Sri Ravi Cheemalapati, learned standing counsel for the 1st respondent-Gram Panchayat, and Smt. K. Mani Deepika, learned standing counsel for the 3rd respondent.

5. Learned counsel for the 3rd respondent on instructions produced Para-wise remarks wherein it is stated that since the petitioner has constructed the building in deviation of the approved building plan by the Gram Panchayat, an inspection was made and basing on the deviations made by him, the 1st respondent issued notice of demolition dated 19-10-2011, but the petitioner has not submitted his explanation to the said notice and also not removed the deviation portion and sought for dismissal of the writ petition.

6. Though the impugned notice dated 19-10-2011 goes to show that the same is issued straight away to the petitioner to remove the deviated portion of the construction made in violation of the approved plan, the said notice is issued without issuing any prior notice. But in the counter, it is clearly stated that the 1st respondent issued notice to the petitioner calling for his

explanation and nothing was placed that the 1st respondent issued prior notice before the impugned proceedings. It appears that the impugned notice of demolition has been issued without any prior notice, which is in violation of principles of natural justice. However, it is suffice to say that interests of justice would be served, if the impugned notice dated 19-10-2011 can be treated as show cause notice to the petitioner.

7. In view of above facts and circumstances, the impugned notice of demolition dated 19-10-2011 issued to the petitioner is treated as show cause notice, in response to which, the petitioner can submit his explanation within a period of four (4) weeks from today and on submission of such explanation, the 1st respondent may consider the same and pass appropriate orders thereon in accordance with law. In case if the petitioner does not submit his explanation to the said notice dated 19-10-2011 as ordered, it is open for the respondent authorities to take appropriate action in accordance with law.

With the above directions, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 08-06-2015

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