

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No. 511 OF 2015

02-07-2015

Between:

State of Andhra Pradesh, rep., by its Principal Secretary, Department
of Revenue, Secretariat, Hyderabad and two others
... Appellants

And

Anand Prabhath Co-operative Housing Society, rep., by its President
Ch. Mallesh, S/o. Ch. Narsaiah, Road No.3, Mahendra Hills, East
Marredpally, Secunderabad and another
... Respondents

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

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WRIT APPEAL No. 511 OF 2015

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard Sri A. Sanjeev Kumar, learned Special Government Pleader for the appellants and Sri D. Prakash Reddy, learned Senior Counsel for the respondents.

This writ appeal is against the order dated 29-11-2013 passed in Writ Petition No. 33666 of 2013, whereby the respondents' petition has been allowed. In the writ petition, the respondents sought directions to issue 'No Objection Certificate' (NOC) to them in respect of municipal plots bearing Nos.8-2-369/1 and 2, in Sy.No.129/11 Paiki at Road No.2, Banjara Hills, Hyderabad. The learned Judge disposed of the writ petition observing as under:

"At the hearing, it is not disputed that both the L.G.C. cases as well as the civil cases in respect of the abovementioned property ended in favour of the petitioners and that therefore, there can be no objection whatsoever for the respondents to grant NOC to the petitioners."

The appellants have filed intra Court appeal feeling aggrieved by the aforementioned observations made in the order.

Sri Sanjeev Kumar, at the outset, invited our attention to the order dated 01-10-2013 passed by a Division Bench in Writ Appeal No.1653 of 2013 to contend that issue of NOC, as prayed for, is not necessary.

The relevant observations made by the Division Bench in the order dated 01-10-2013 read thus:

"In our considered view the learned Single Judge has

taken a correct view that the department cannot insist on production of No Objection Certificate, as there is no provision of law. In addition thereto, His Lordship adds that the Government officials must act in accordance with the provision of law and not by any other self-styled imposition of norms. The rule of law is the basic structure of our Constitution and so also part and parcel of running of the Government. It is settled position of law that any individual person can act in any manner unless prohibited by law, whereas the artificial person cannot act unless provided by law and here there is no such provision of law calling for production of No Objection Certificate. The demand for production of No Objection Certificate is nothing but an arbitrary action and this sort of action should be dealt with firm hand.

Accordingly, we affirm the judgment and order of the learned Single Judge. We direct henceforth that no Government official shall act or take action in any manner unless the official concerned is authorized by law. Accordingly, the No Objection Certificate which has hitherto been asked for registration of the document shall not be demanded any more unless it is authorized by an appropriate enactment with prospective effect and not retrospective effect.

We feel that this judgment has got tremendous public importance. Therefore, a copy of this judgment shall be circulated to all the District Registrars, who, in turn, shall issue instructions to their officers concerned under his control.”

In view of the observations made by the Division Bench in the order dated 01-10-2013, Sri Sanjeev Kumar submits that it is not necessary for the appellants to issue NOC as prayed. We find force in the submission made by Sri Sanjeev Kumar. He is right in contending that in view of the order passed by the Division Bench in Writ Appeal No. 1653 of 2013, it is not necessary for the appellants to issue NOC. It is open to the respondents to produce a copy of this order and the order of the Division Bench in Writ Appeal No. 1653 of 2013 before the concerned authority, if they insist for NOC. In view of these observations, the impugned order renders ineffective.

The writ appeal is disposed of in terms of this order.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

02-07-2015
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