

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.28533 of 2012

ORDER:

This Writ Petition is filed challenging the order dt.17.7.2012 in Roc.No.G1/974/2012 dt.17.07.2012 passed by respondent No.1 revoking building permission No.H1/205/2011 dt.12.9.2011 on the ground that the petitioner had misrepresented the facts to respondent No.1 for obtaining the building permission.

2. Petitioner contends that he purchased a house plot to an extent of 300 sq.yards in Sy.No.87/2 situated at Jangaon, Warangal District under a registered sale deed bearing document No.1236/2011 dt.7.3.2011 from one Ravela John, S/o.Kotaiah, resident of Jangaon, Warangal District. He stated that his vendor obtained the said property by way of succession from his father, that he applied for permission to respondent No.1 for making construction on 26.8.2011 by paying permit fee of Rs.43,770/-, and permission was granted *vide* proceedings No.H1/205/2011 dt.12.9.2011 by officials of respondent No.1 after inspecting his house plot. He alleged that he started digging pits for construction of pillars, that pillars were also raised up to basement and basement was also constructed, and at that juncture, respondent No.2 made a complaint to respondent No.1 stating that the property purchased by the petitioner was gifted to him (respondent No.1) by the vendor of the petitioner as well as other family members of the vendor under a registered document No.4498/2007 dt.12.9.2007 and to cancel the sanction granted to petitioner.

3. Petitioner contends that on the basis of the said complaint of respondent No.2, a show cause notice dt.17.7.2012 was issued

under Section 344(6) of the Andhra Pradesh Municipalities Act, 1965 (for short, “the Act”) asking the petitioner to submit his explanation; that he submitted explanation, but without considering the same, the impugned order has been passed simply stating that the explanation was not satisfactory.

4. Counter-affidavit is filed by respondent No.1 admitting that permission construction was granted to the petitioner on the basis of the sale deed dt.7.3.2011 produced by the petitioner on 12.9.2011, but it is stated that on the complaint of respondent No.2, the same was revoked. Respondent No.1 admits that he is not the competent authority to settle disputes of title in respect of property, but states that he did not find the explanation of the petitioner to be satisfactory and that was why he passed the impugned order.

5. Respondent No.2 also filed a counter disputing the right of the petitioner in the subject property and admitting that representation was made on 30.6.2012 to respondent No.1 by him claiming that the vendor of the petitioner had sold away the extent obtained by him from the vendor’s father to various other persons and had no right to sell the subject plot to the petitioner since he had no right or title to it.

6. Learned counsel for the respective parties reiterated their stand.

7. Sub-section (6) of Section 344 of the Act provides that any permission granted by the Municipality can be suspended or revoked if the grantee had obtained the same by misrepresentation or fraud.

8. If respondent No.1 holds that the petitioner had obtained the building permission from him by misrepresentation or fraud in the impugned order, he is supposed to indicate the reasons thereof.

Except stating that the explanation given by the petitioner is not satisfactory, no other reason is contained in the impugned order. It is unfortunate that the Commissioner of respondent No.1, who is a law graduate, has passed the impugned order ignoring the basic principle of natural justice that an order affecting the rights of a person should be supported by reasons. (See **S.N.Mukherjee vs. Union of India**).

9. That apart, respondent No.1 himself has admitted in his counter that he is not the competent authority to decide the issues of ownership of property. When the petitioner had produced a registered sale deed and on the basis of the same, permission was granted to him to make construction in the subject land, assuming that respondent No.2 had right, title or interest in the subject property and made a complaint to respondent No.1 in that regard, the only option available to respondent No.1 was to direct respondent No.2 to approach a competent Civil Court and establish his right in the property. He cannot invoke Section 344 of the Act and without assigning any reason, revoke the permission granted to the petitioner to make construction in the subject land.

10. Also if at all the vendor of the petitioner had executed a sale deed in favour of the petitioner without having any right, title or interest in the subject property, the petitioner cannot be accused of any misrepresentation or fraud because he would have believed that his vendor would have title to the property.

11. More importantly, the order of revocation has been passed by respondent No.1 ten months after the permission was granted to the petitioner and in that duration, the petitioner has stated that he had dug pits for construction of pillars and had even raised pillars up to basement and had constructed the basement. By revoking the permission at that stage, respondent No.1 has caused grave prejudice to the petitioner and caused him substantial financial loss

also. So his action is *mala fide*.

12. Therefore, the impugned order dt.17.7.2012 passed by respondent No.1 is set aside; respondent No.1 shall permit the petitioner to complete the construction in accordance with the permission granted to him dt.12.9.2011 without invoking Section 216 of the Act since it was respondent No.1, who, by passing the impugned order, made the petitioner to stop the work; any construction which is made by the petitioner would be without prejudice to the right of respondent No.2 to dispute the title of the petitioner in a competent Court of law; and it is open to respondent No.2 to approach a competent Civil Court for determination of his right, title and interest in the subject property. Respondent No.1 shall also pay costs of Rs.2,000/- (Rupees two thousand only) to the petitioner within a period of four (4) weeks from today.

13. Accordingly, the Writ Petition is allowed with costs.

14. Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24.02.2016

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