

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos. 5379 AND 25358 OF 2011

COMMON ORDER:

These two Writ Petitions are being disposed of by this common order as they relate to the house No. 13-8-128 (T.S.No. 685) admeasuring 100 square yards situated in Kanyaka Parameswari Temple Street, Bheemunipatnam, Visakhapatnam District.

W.P.No. 5379 of 2011 was filed by a senior citizen of 85 years challenging the action of respondent Nos. 1 and 2 in not taking action in accordance with law in respect of the unauthorized construction made by respondent Nos. 3 and 4 in the said premises. This Court, by order dated 04-03-2011, directed respondent No. 2 to ensure that respondent Nos. 3 and 4 do not make any construction over the site in question unless there exists a valid permission to construct. Thereafter, respondent No. 3 filed W.P.No. 25358 of 2011 challenging the interference by respondent No. 2 in the construction activity. This Court, by order dated 27-03-2012, directed respondent No. 2 to produce the copy of the proceedings dated 05-02-2011 returning the application of the petitioner for permission and in the meanwhile, *status quo* was directed to be maintained. The copy of the endorsement dated 05-02-2011 is produced before this Court and it reads as follows:

"In the reference first cited, this office on noticing the unauthorized construction, issued Provisional order under Section 228 (1), dated 20-01-2011 calling upon you to remove the unauthorized construction. Having received and acknowledged the same, you have submitted Building Plans in reference second cited, seeking approval for the construction of G + 2 upper floors duly paying requisite amount towards BLF, VUDA and other charges. This office in the reference third cited, returned the plans on 29-01-2011 for want of registered documents and on the ground that plans cannot be approved for the sites abutting width of passage of 5' 0" as per present G.O.Ms.No. 678, MA dated 07-09-2007. In the reference fourth cited, you have submitted a

representation with a request to consider your plans in reference second cited which were already returned by this office vide reference third cited. In this regard, it is to inform you that you cannot take a plea basing on the strength of old G.O.Ms.No. 423, which is no more in existence. Hence, the endorsement already issued by this office returning the Building Plan vide B.A.No. 160/2010-11, dated 29-01-2011 holds good. Hence, the request of the applicant cannot be considered. As such, rejected."

Learned counsel for the petitioner submits that the said endorsement was not served on her but the endorsement on the reverse shows that when it was sought to be served, it was refused and in those circumstances, a copy of the endorsement was pasted on the premises.

Be that as it may, learned counsel for the petitioner in W.P.No. 25358 of 2011 submits that the construction was completed and when criminal prosecution was launched under the provisions of the Municipalities Act, penalty was also paid. Learned counsel appearing for the petitioner in W.P.No. 5379 of 2011, on the basis of the instructions, submits that the construction of the building was not completed and the building is standing on the site as it was there at the time of passing of the orders of the *status quo*. A counter affidavit was filed by respondent No. 2 in the year 2011 itself and the present condition of the building is not known.

In the circumstances, both the Writ Petitions are disposed of directing respondent No. 2 to inspect the premises and if respondent No. 2 notices any violation of law, he shall issue appropriate notice to the petitioner in W.P.No. 25358 of 2011 and take necessary action in accordance with law. Till such time, no action for demolition of the building shall be taken up and the petitioner also shall not make any further construction. The entire exercise should be completed within a period of three months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed in consequence. No order as to costs.

A.RAMALINGESWARA RAO, J.

Date: 06th December, 2016.
JSK

