

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.41360 OF 2016

Dated:28.11.2016

Between:

K. Sree Harsha, S/o. Vijaya Raghava
Chary, Aged about 25 years, Occ: Business,
R/o.H.No.18-532/2, Tirumala Colony,
Shadnagar Town, Ranga Reddy District .. Petitioner

And

The State of Telangana, rep., by its
Principal Secretary, Department of
Municipal Administration, Secretariat,
Hyderabad and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.41360 OF 2016

ORDER:

The petitioner challenges notice, dated 16.11.2016, issued by the Commissioner, Shadnagar Municipality, the 2nd respondent, whereunder he was directed to remove the alleged construction of compound wall and part of RCC ground floor building from the subject land.

2. The petitioner was served with notice, dated 16.11.2016, which, *prima facie*, alleges that he encroached the open space and constructed compound wall and RCC ground floor building. On receipt of the said notice, the petitioner submitted representation on 18.11.2016 requesting to supply a copy of layout concerning the subject property. It appears that since the petitioner did not construct house in the subject land, though he obtained permission for construction, the said house number earlier allotted to the subject premises was cancelled. Thereafter, the petitioner made representations to various authorities raising several issues. Alleging that the compound wall was already removed and the respondent – Municipality is in the process of dismantling the building, the present Writ Petition is filed.

3. Learned counsel for the petitioner submits that Section 192 of the Telangana Municipality Act (for short, 'the Act'), under which the impugned notice issued, will not attract. He submits that it is not the case of the respondent – Municipality also that the petitioner encroached into the public road or made construction projecting into the public road. He would further

submit that at the most, Section 228 of the Act attracts, which requires a provisional conclusion by the 2nd respondent and on such provisional conclusion, explanation has to be called. However, in the present case, without following such procedure, straight away the impugned notice is issued to the petitioner to remove the alleged construction.

4. Learned Standing Counsel for the respondent – Municipality would fairly submit that no prior notice was issued to the petitioner before asking him to remove the alleged illegal construction.

5. In view of the above submissions, on the *prima facie* consideration of the provisions under Sections 192 and 228 of the Act and the fact that no prior notice was issued before asking the petitioner to remove the alleged illegal construction, I am of the considered opinion that the order impugned in the Writ Petition is not sustainable on the primary ground of violation of principles of natural justice. However, the respondent – Municipality is at liberty to cause proper notice, which would contain all the details of illegal construction made, and after affording due opportunity to the petitioner, shall take further course of action in accordance with law. A strict time schedule shall be followed by the respondent – Municipality in taking action against the alleged illegal construction. Having regard to the disposal of the Writ Petition in the above terms, there is no expression of opinion on merits and all the issues are left open to the petitioner to be agitated by him.

6. The Writ Petition is accordingly disposed of. There shall be no order as to costs.

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

Date:28.11.2016

KH

P. NAVEEN RAO, J

