

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

**WRIT PETITION No.11415 of 2016**

**O R D E R:**

Heard Sri Vedula Srinivas, Counsel representing Miss I.K.Annapurna, Counsel for the petitioners and Sri S.Laxmi Narayana Reddy, Standing Counsel for GVMC(AP).

2. Petitioners in this Writ Petition assail the endorsement dt.03.08.2015 of the Commissioner of the 1<sup>st</sup> respondent declining permission to the petitioners for making construction in the subject property located in T.S.No.71(part) of Waltair Ward, Visakhapatnam.

3. A reading of the impugned order indicates that the Commissioner of the 1<sup>st</sup> respondent has relied upon the remarks of the Estate Officer, employed by the 1<sup>st</sup> respondent, as the basis for rejecting permission for making construction to the petitioners.

4. In the said remarks, the Estate Officer had opined that the petitioners are seeking permission on the basis of a General Power of Attorney dt.02.07.2013 in relation to a site in plot No.62 within the specific boundaries, but the said General Power of Attorney refers to an order passed by the Madras High Court in O.P.No.15/1974 and the boundaries mentioned therein do not tally with the boundaries mentioned in the General Power of Attorney referred to above.

5. Counsel for the petitioners contends that before acting on the remarks of the Estate Officer, the Commissioner of the 1<sup>st</sup> respondent ought to have issued a notice to the petitioners to explain and satisfy the Commissioner as to their *prima facie* title and right to make construction in the plot, which is the subject matter of General Power of Attorney.

6. In the counter affidavit filed by the respondents, a stand is taken, which is some what different from what is indicated in the impugned endorsement dt.03.08.2015 of the Commissioner of the 1<sup>st</sup> respondent.

7. It is settled law that an order passed has to be judged on its contents and therefore reasons in the form of counter affidavit cannot be considered in adjudicating correctness of the order.

8. Having regard to the stand taken by the petitioners and the respondents, I deem it just and proper to set aside the impugned endorsement dt.03.08.2015 and remit the matter back to the 1<sup>st</sup> respondent to consider the issue afresh after providing personal hearing to the petitioners, so that the petitioners would have an opportunity to clarify the doubts, if any, which the Commissioner of the 1<sup>st</sup> respondent entertains in the matter.

9. Accordingly, the Writ Petition is allowed; impugned endorsement dt.03.08.2015 of the Commissioner of the 1<sup>st</sup>

respondent is set aside; the Commissioner of the 1<sup>st</sup> respondent is directed to consider the matter afresh, in the light of the above observations, within three (03) weeks from the date of receipt of a copy of this order and communicate his decision thereon to the petitioners. There shall be no order as to costs.

10. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

**M.S.RAMACHANDRA RAO, J**

07<sup>th</sup> September, 2016  
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