

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

WRIT PETITION No.7493 OF 2012

ORDER :

This Writ Petition is filed by the petitioner challenging notice in file No.G1/2936/2011, dt.28.12.2011 issued by the 1st respondent asking the petitioner to stop construction pursuant to a construction permission granted to the petitioner on 12.12.2011 by the 1st respondent.

2. Petitioner claims to be the owner and possessor of land admeasuring 165 sq.yards in survey No.736 of Metpally village and Mandal, Karimnagar District, having purchased the same under a registered sale deed document No.1203 of 2008 dt.09.09.2008. He applied to the 1st respondent for permission to make construction of a residential portion in the said plot. Vide proceedings in File NO.G1/116/2665/2011-12, dt.12.12.2011 the 1st respondent granted permission to the petitioner to make construction.

3. On 26.12.2011 it appears that the 2nd respondent had lodged a complaint with the 1st respondent disputing the title of the petitioner.

4. In proceedings File No.G1/2936/2011, dt.28.12.2011, the 1st respondent straightaway directed the petitioner to stop making constructions pursuant to permission dt.12.12.2011 granted to him, stating that there appears to be a civil dispute between the petitioner and respondents 2 to 4 and until the said dispute is decided by a competent civil Court, he should not proceed with the construction.

5. Petitioner contends that he is the absolute owner of the property; permission was granted to him by the 1st respondent was only after verification of his title; and if the respondents 2 to 4 dispute his title, they should be asked to go to the civil Court but the 1st respondent acted illegally and arbitrarily by directing the petitioner to stop

construction.

6. The 1st respondent filed a counter-affidavit admitting that after scrutiny of the petitioner's application by Town Planning Officials and after receiving the building permission fee, petitioner was granted permission for construction of a RCC residential house on 12.12.2011 which is valid for three years from the date of sanction. He also admitted that on the basis of an objection raised by 2nd respondent alleging that the petitioner had encroached into his land and started construction, the impugned order has been passed. He also stated that on perusal of the documents submitted by 2nd respondent, 1st respondent had noticed that the same piece of land is covered by both documents as per the boundary descriptions and that was why the impugned order was passed.

7. No material is placed before this Court by the 1st respondent in support of the above plea raised in the counter affidavit.

8. As per the provisions of A.P. Municipalities Act, 1965 (for short 'the Act'), a sanction for construction is granted under Section 212 of the said Act, after the 1st respondent-Municipality is satisfied about the *prima facie* title of the applicant. This, the 1st respondent had already done by granting permission to the petitioner on 12.12.2011. If the 2nd respondent had raised any issue disputing the title of the petitioner, 1st respondent has to direct the 2nd respondent to approach the competent civil Court and get a decision on the issue of title, but he cannot direct the petitioner to stop construction by forming some opinion about the title of the petitioner or the claim of the 2nd respondent. No provision in the Act entitles the 1st respondent to decide any question of title.

9. Admittedly, petitioner had submitted his title deed and also paid

requisite permit fee to obtain the construction permission, but the petitioner has been prevented from doing so by the 1st respondent without even passing any orders canceling the petitioner's permission and thereby making the petitioner forego the permit fee and other charges paid by him for obtaining the building permission.

10. Section 215 of the Act sets out grounds on which the Municipality may refuse permission for making construction. It is not the case of the 1st respondent that any of these grounds are attracted in the present case. It is also not the case of the 1st respondent that any fraud had been played by the petitioner to secure the building permission.

11. Therefore, the action of the 1st respondent in asking the petitioner to stop construction by the impugned order has to be declared as illegal, arbitrary and violative of the provisions of the Act and Article 300A of the Constitution of India.

12. Accordingly, the Writ Petition is allowed and the impugned proceeding is set aside. Since the 1st respondent had acted illegally and arbitrarily in preventing the petitioner from making construction pursuant to the permission granted to him on 12.12.2011, the 1st respondent cannot be allowed to take advantage of his own wrong and invoke section 216 of the Act and contend that permission granted to the petitioner had lapsed and ask the petitioner to apply for fresh permission by paying fees for the said permission afresh. Petitioner shall be permitted by the 1st respondent to complete the construction as per the sanction granted to the petitioner on 12.12.2011 within a period of three years from today. The 1st respondent shall also personally pay costs of Rs.5,000/- to the petitioner within four (04) weeks from today.

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

M.S.RAMACHANDRA RAO, J

23rd February, 2016.

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