

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.42111 OF 2016

DATED : 13.12.2016

Between :

Galiboina Atchaiah, S/o.G.Rosaiah,
Aged about 55 yrs, R/o.Mahalakshmi Nagar,
Poranki, Vijayawada Rural Mandal,
Krishna District.

Petitioner

And

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Department of Municipal Administration and Urban Development,
A.P.Secretariat, Velagapudi,
Amaravathi, Guntur District & others

Respondents



This court made the following :

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ORDER :

Alleging that petitioner undertook construction of 3rd floor, even though building permission granted was only for ground + two floors and also violated the set backs as required by the building permission application, show cause notice was issued on 21.11.2016. Alleging that petitioner has not responded to the said show cause notice and therefore has no explanation to offer, final orders are passed on 28.11.2016 directing the petitioner to remove the alleged illegal and unauthorized constructions made within 15 days, failing which action as required under the Capital Region Development Authority Act, would be taken. This order is under challenge in this writ petition.

2. Heard learned counsel for the petitioner and learned Standing counsel for CRDA.

3. Learned counsel for the petitioner would submit that no notice was served on the petitioner as alleged and without issuing show cause notice no final orders could have been passed.

4. Learned Standing counsel submits that since petitioner refused to receive the notice, it was pasted on the pillar of the building under construction and therefore, it is deemed to have been served on the petitioner and thus order was validly passed.

5. In order to ascertain when the notice was actually pasted on the wall and proof of pasting notice on the wall, time was granted to learned Standing counsel.

6. As directed, learned Standing counsel produced photograph along with the notice issued. From the Photograph it is seen that a man adjacent to a pillar is holding notice but the contents of the notice is not visible from the photograph and no date is mentioned anywhere, to show as if, the notice was pasted on 21.11.2016. However, even assuming that a notice was issued on 21.11.2016, validly served on 21.11.2016, the time required would be one week. Therefore, there was no tearing hurry for the respondent-authority to pass orders on the day when the notice period expires and without waiting for reasonable time.

7. According to learned counsel for the petitioner notice was pasted on 24.11.2016 and therefore, petitioner has sufficient time and even before the time granted expired, final orders are passed.

8. There is no clear proof of service of notice on 21.11.2016 and according to learned counsel for the petitioner notice was served on the petitioner on 24.11.2016. The order impugned could not have been passed even before the time granted has expired. Therefore, the order impugned is liable to be set aside.

9. Accordingly, the Writ Petition is allowed. Petitioner is granted one week time for filing reply to the notice dated 21.11.2016, and if such explanation is filed within the time granted, the authority shall pass reasoned order on due consideration of the explanation and communicate the same to the petitioner. Till a decision is made and communicated to the petitioner, no coercive steps shall be taken against the petitioner. However, if the petitioner does not file any explanation within the time granted, in terms of the notice issued on 28.11.2016, it is

open to the respondent-authorities to proceed against the petitioner without further notice. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

13th December, 2016

Note : Issue c.c. in three (3) days

B/o.
Rds

