

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.10671 OF 2012

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

“to issue a Writ, Order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the 2nd respondent in trying to demolish structures in house plot belonging to the petitioner admeasuring 75 sq.yds in Sy.No.103/2 of Turangi Village, Kakinada Rural Mandal, East Godavari District by issuing proceedings in Rc.No.40/12 dated 31-03-2012, directing the petitioner to stop ongoing construction and to remove existing structures being undertaken under a valid approved sanctioned plan issued by the 2nd respondent in BLR.No.72/2011-12 dated 31-01-2012, as bad, illegal, arbitrary, contrary to the provisions of The A.P. Panchayat Raj Act and Rules in G.O.Ms.No.67 (P.R. & R.D.) dated 26-02-2002 and offends Articles 14 and 21 of Constitution of India and to set aside the same, consequentially to direct the respondents not to interfere with the construction, structures under the said approved sanctioned plan and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Heard the learned counsel appearing for the petitioner and learned Government Pleader for Panchayat Raj, appearing for the 1st respondent and Sri Ravi Chemmalapati, learned standing counsel, appearing for the 2nd respondent.

3. According to the petitioner, he purchased an extent of 75 square yards out of Acres 0.50 cents in survey No.130/2 (old survey No.89/1) of Turangi Village, Kakinada Rural Mandal, East Godavari District, for a valid consideration by way of registered document No.6177/2010, dated 14.07.2010 and he has been in peaceful possession and enjoyment of the said property. It is further stated that even prior to the said transaction, the vendor of the petitioner obtained permission for conversion of agricultural land into non-agricultural purpose from the Competant Authority-cum-Revenue Officer, Kakinada, vide proceedings in D.Dis.No.A/1320/2009, dated 24.02.2010, for an extent of Acres 0.50 cents. It is further stated that after purchasing the said property, petitioner herein made an application to the Grampanchayat for approval of sanctioned plan for construction of G+1 RCC Building in the said land admeasuring 66.66 square yards and the competent authority granted approval for construction of G+1 vide proceedings bearing B.L.R.No.72/2011-12, dated 31.01.2012 and for obtaining construction permission, petitioner paid a sum of Rs.12,724/- towards betterment charges and building fee and also Rs.2000/- towards water charges. It is also the case of the petitioner that he dumped all the material required for commencing the work and started construction in the month of January 2012. While the things being so, the 2nd respondent – Grampanchayat, issued a notice dated

31.03.2012, directing the petitioner to stop construction and to remove the constructions already raised on the ground that there is no sanctioned plan of the Grampanchayat. It is further stated in the writ affidavit that on 03.04.2012, petitioner submitted his reply, stating that he obtained sanctioned plan duly approved by the Executive Officer and not undertaking any constructions in deviation to the sanctioned plan. It is alleged in the writ affidavit that the 2nd respondent came to the work place on 11.04.2012 at about 09.00 a.m. with staff of the Grampanchayat and attempted to demolish the constructions already raised and with the intervention of the village elders, 2nd respondent went back and taken away the water storage drums and other construction instruments on Grampanchayat tractor and while leaving the place of construction, the 2nd respondent warned the petitioner not to proceed with construction without obtaining sanctioned plan once again from him. Pleading so, the present writ petition came to be filed.

4. This Court, while ordering notice on 13.04.2012, in W.P.M.P.No.13481 of 2012, passed the following order:

“Heard Sri V. Venugopala Rao, learned counsel for the petitioner, Sri G. Elisha, learned standing counsel for Panchayats for the 2nd respondent and Sri Zakir Ali Danish, learned Assistant Government Pleader for Panchayat Raj and Rural Development for the 1st respondent.

The writ affidavit and the material papers enclosed show that the constructions in question are

being proceeded with on the permission granted by the Panchayat, which is now being claimed to be unauthorized and beyond jurisdiction. Pending enquiry into the said question and a decision thereon, any interference with the progress of the construction may cause substantial injury to the petitioner and therefore, the matter requires an interim intervention.

Therefore, the petitioner is permitted to proceed with the construction in accordance with the sanctioned plan and permission already granted by the Panchayat subject to further orders herein, with which the respondents may not interfere.”

5. During the course of hearing, it is brought to the notice of this Court that pursuant to the interim orders granted by this Court, petitioner herein completed the construction. It is also the categorical submission of the learned counsel for the petitioner that without issuing any prior notice, the 2nd respondent issued the impugned notice of removal and the same is violative of principles of natural justice. It is a settled and well established proposition of law that any action on the part of the authorities which has civil consequences must necessarily be preceded by a notice and opportunity of being heard to the persons likely to be affected by such action. In the instant case, the same is conspicuously absent, as such, the impugned notice under challenge is in total violation of the principles of natural justice.

6. No counter affidavit is filed by the respondents denying the allegation that the impugned notice was not preceded by any show-cause notice.

7. In view of the above said reasons, this Court is of the considered opinion that the ends of justice would be served, if the writ petition is disposed of, by keeping it open for the respondents to proceed in accordance with law in the event of there being any contravention by the petitioner.

8. For the aforesaid reasons, writ petition is disposed of, keeping it open for the respondents to proceed in accordance with law, after giving notice and opportunity of being heard to the petitioner in respect of the subject constructions.

9. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

17.11.2016
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A.V.SESHA SAI, J

