

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.8936 OF 2016

ORDER

The prayer of the petitioner in this case is as under:

‘For the reasons stated in the accompanying affidavit filed in support of the writ Petition, it is therefore, prayed that this Hon’ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus declaring the action of the Respondents in issuing the impugned notice vide R.O.C NO: 889/2016/G1 dated 5.03.2016 and trying to demolish the house vide D.No 9/314/1 at Teachers colony in Sy no 69/2 to an extent of 0.02 ½ GTS of Chedireddypalli Municipality, Venaktagiri Mandal, SPSR Nellore District as illegal, arbitrary and un-constitutional and consequently direct the respondents not to demolish the House vide D.No 9-314/1 at Teachers colony in Sy no 69/2 to an extent of 0.02 ½ GTS of Chedireddypalli Municipality, Venaktagiri Mandal, SPSR Nellore District pass such other order or orders as this Hon’ble Court may deem fit and proper in the interest of justice.’

Perusal of the impugned encroachment notice dated 05.03.2016 issued by the Venkatagiri Municipality reflects that the petitioner was called upon thereunder to remove the encroachment within a time frame. This notice was issued under the provisions of the A.P. Municipalities Act, 1965 (for brevity, the Act of 1965’). However, the scheme of Section 192 of the Act of 1965 relating to removal of encroachments indicates that the owner or occupier of the premises is to be given an opportunity to put forth his case as Section 192(2) of the Act of 1965 speaks of the owner or occupier proving that such encroachment has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with permission.

That being so, this Court is of the opinion that the interest of justice would be sufficiently served by permitting the petitioner to treat the impugned encroachment notice as a show-cause notice issued under Section 192(1) of the Act. It shall be open to the petitioner to submit his

explanation to the aforestated notice within one week from the date of receipt of a copy of this order. Thereupon, the Venkatagiri Municipality shall consider the said explanation and take appropriate action thereon, as warranted, in accordance with the due procedure. Needless to state, the Venkatagiri Municipality shall take no coercive measures pursuant to the impugned demand notice till a final decision is taken upon consideration of the petitioner's explanation.

Sri Mohd. Saleem, learned standing counsel for the Venkatagiri Municipality, is agreeable to the disposal of the writ petition on the aforestated lines.

The writ petition is accordingly allowed to the extent indicated above. Pending miscellaneous petitions shall stand closed. No order as to costs.

SANJAY KUMAR, J

17th MARCH, 2016

Note: Issue C.C. by today.

B/o Svv