

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No. 25424 OF 2012

ORDER:

This writ petition filed under Article 226 of the Constitution of India challenges the proceedings Rc.No.47/12, dated 12.05.2012, of the Panchayat Secretary, Karlapalem Gram Panchayat, Karlapalem Village and Mandal, Guntur District - 4th respondent.

Heard Sri K. Chidambaram, learned counsel for the petitioners, learned Government Pleader for Panchayat Raj for respondent Nos.1 and 2, Sri Ravi Chimalapati, learned Standing counsel for respondent Nos.3 and 4 and perused the material available on record.

According to the petitioners, they are the absolute owners of the site admeasuring 198.8 square yards each out of Ac.3.01 cents bearing D.No.580/2 of Karlapalem Village and Mandal, Guntur District, having purchased the same under two different registered sale deeds vide document Nos.623/12, dated 02.02.2012 and 6128/2011, dated 17.11.2011, for valuable consideration. It is stated that the petitioners submitted applications to the 3rd respondent/Gram Panchayat for approval of the plan and permission for construction of the building and the Gram Panchayat vide its resolution No.3, dated 27.02.2012 granted approval of the plan and eventually by proceedings Roc.No.5/2012, dated 15.03.2012, accorded permission for construction of RCC roof building with ground floor for shops and parking and first and second floors for residential purpose. Pursuant to the said approval and the permission, the petitioners claimed to have started the work and completed the ground floor and raised the pillars for laying the slab on the first floor. At that point of time, the 4th respondent issued notice bearing Roc.No.45/2012, dated 24.04.2012, directing the petitioners to stop

the construction on the ground that the District Panchayat Officer vide proceedings, dated 23.04.2012, informed that the permission for construction of building in Sy.No.580/2 of Karlapalem had been obtained without furnishing necessary permissions. In response to the said notice, the petitioners have submitted their explanation stating that they started construction as per the approved plan and completed ground floor and making construction of first and second floors without any deviation, but the 4th respondent again issued another notice, dated 03.05.2012, directing them to stop the construction and to comply with the requirements mentioned in the said notice for which the petitioners submitted their explanation stating that the permission was granted after verifying the required requirements and that there would not be any necessity to comply the unreasonable requirements as mentioned in the notice, dated 03.05.2012. It is further stated that notices were issued to harass them at the behest of local politicians and that the 4th respondent - Panchayat Secretary issued the proceedings under challenge, dated 12.05.2012, cancelling the permission granted stating that the then Secretary accorded permission due to lack of experience though the plan submitted by the petitioners did not contain any other permissions from other departments.

It is the contention of the learned counsel for the petitioners, reiterating the averments in the affidavit filed in support of the writ petition, that before resorting to the impugned action, the 4th respondent did not issue any show cause notice nor afforded any opportunity of hearing to the petitioners to defend their case and the reasons assigned by him in the impugned order of cancellation of permission cannot be sustained in the eye of law and the same is violative of the provisions of A.P. Panchayat Raj Act and the Gram Panchayat Layout Rules notified vide G.O.Ms.No.67, dated 26.02.2002.

In the counter affidavit filed by the Panchayat Secretary, though he pleads that notices were issued prior to passing of the impugned order, the counter is absolutely silent as to issuance of show cause notice for cancellation. This, in the considered opinion of the Court, cannot be sustained in the eye of law. It is a settled and well established preposition of law that any action on the part of the authorities, which has civil consequences, should necessarily be preceded by notice and opportunity to the persons likely to be affected by such action. In the instant case, the same is conspicuously absent. Learned counsel for the petitioners submits that pursuant to the orders of this Court in WPMP.No.32401 of 2012 the petitioners proceeded with the construction and completed the same.

For the aforesaid reasons, the writ petition is allowed, setting aside the proceedings, dated 12.05.2012, issued by the Panchayat Secretary, Karlapalem Gram Panchayat, Karlapalem Village and Mandal, Guntur District – 4th respondent. However, it is open for the respondents to proceed in accordance with law and in the light of the observations made supra, if they are advised to do so.

Miscellaneous petitions, if any, shall stand closed. No order as to costs.

A.V. SESA SAI, J

Date: 01.12.2016
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