

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.3767 of 2016

08.02.2016

Between:

Kothamasu Vidyasagar

.. Petitioner

and

The State of Andhra Pradesh,
represented by its Principal Secretary,
Municipal Administration and Urban Development Department,
Hyderabad and another

.. Respondents

Counsel for the petitioner: Mr.P.Rama Sharana Sarma

Counsel for respondent No.1: Government Pleader for
Municipal Administration and Urban Development (AP)

Counsel for respondent No.2: --

The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to set aside endorsement, dated 21.10.2015, whereunder respondent No.2 has communicated to the petitioner that in view of pendency of O.S.No.140 of 2015 on the file of the learned Principal Junior Civil Judge, Chirala, relating to the dispute over the property in respect of which building permission has been granted and assailed in the appeal, the petitioner may get his right declared by the competent Court of law.

The undisputed facts of the present case reveal that respondent No.2 himself has granted building permission to the third party and against the said decision, the petitioner has filed an appeal before the Municipal Council under Section 345(1)(b) of the Andhra Pradesh Municipalities Act, 1965.

From a perusal of the impugned endorsement, it is clear that respondent No.2 has not even placed the petitioner's appeal before the appellate authority i.e., the Municipal Council and instead, he has taken a decision by himself. In other words, respondent No.2 has arrogated to himself the powers of the appellate authority and rejected the petitioner's appeal. Respondent No.2, being the executive authority, is under obligation to place the appeal of the petitioner before the Municipal Council and that it is the latter, which shall examine the petitioner's appeal and pass appropriate order. The power of respondent No.2 in this context is confined only to the communication of such decision to the petitioner.

In the above view of the matter, the impugned endorsement, 21.10.2015, of respondent No.2, is set aside. Respondent No.2 is directed to place the petitioner's appeal before the Municipal Council and the latter shall give the petitioner and the third party in whose favour building permission was granted, an opportunity of personal hearing and

take an appropriate decision. The Municipal Council shall complete this process within a period of one month from the date of receipt of a copy of this order.

The Writ Petition is accordingly allowed.

As a sequel to allowing the writ petition, W.P.M.P.No.4809 of 2016 filed by the petitioner for interim relief shall stand disposed of as infructuous.

08th February, 2016
GHN

C.V.NAGARJUNA REDDY, J