

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.36286 OF 2016

ORDER:

The writ petition is filed questioning the order dated 26.09.2016, issued by the 1st respondent rejecting the application submitted by the petitioners for regularization of the unauthorized constructions.

The principal contention raised by the petitioners is that the impugned order is totally a non speaking order and it is not discernable from the same as to why the application made by the petitioners cannot be considered.

On the other hand, the learned standing counsel as well as the learned Government Pleader would point out that the G.O.Ms.No.128 dated 22.05.2016, the Andhra Pradesh Regulation and Penalization of Buildings Constructed Unauthorizedly and in Deviation of the Sectioned Plan Rules, 2015 and particularly Rule 13 provides an alternative remedy of appeal and the petitioners are at liberty to avail the alternative remedy of appeal.

Having considered the respective submissions and a bare reading of the impugned proceedings do not disclose the reasons for rejection of the application of the petitioners for regularization. What all has been stated in the impugned proceedings is that the application of the petitioners has not been considered in terms of the scheme under G.O.Ms.No.128 dated 22.05.2015 as the application is found to be not in accordance with the rules. The reasoning of the first respondent cannot be said to be any reasoning at all. Under which Rule, the application is liable to be rejected and for what deviations, the application is liable to be rejected has not been stated. In the absence of there being a reason for rejection, the remedy of appeal also would only be futile, as in appeal, the reasons stated before the primary authority would fall for

consideration to be right or wrong. In the absence of reasons except making a complaint, the aggrieved party cannot attack the order in any manner. In those circumstances, the impugned order being a non speaking order, the same is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the proceedings dated 26.09.2016, issued by the 1st respondent-Commissioner. However, the 1st respondent is directed to pass fresh orders on the application submitted by the petitioners after considering the material placed by them and specifically stating as to why the application of the petitioners can be considered or cannot be considered. It is needless to mention that on account of setting aside the impugned proceedings with a direction to reconsider the application of the petitioners for regularization shall be deemed to be pending. However, till such time the fresh orders are passed on the application of the petitioners, the 1st respondent shall not take any coercive action against the building of the petitioners. Further, the petitioners shall not make any further constructions pending consideration of the application by the first respondent. No order as to costs.

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

CHALLA KODANDA RAM, J

Dated:26.10.2016
Gk

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