

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

WRIT PETITION No.2140 of 2016

-
27.01.2016

Between:

M.Shaik Shavali

.. Petitioner

and

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

.. Respondents

Counsel for the petitioner: Mr.K.Sita Ram

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

Counsel for respondent Nos.2 to 4: Assistant Government Pleader
for Roads and Buildings (AP)

Counsel for respondent No.5: --

The Court made the following:

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ORDER:

This writ petition is filed for a *Certiorari* to quash notice, dated 08.01.2016, issued by respondent No.5.

The petitioner averred that his father purchased the subject property under a registered sale deed, dated 25.10.1976, from its owner, that on 08.02.2013, when the respondents have marked a portion of the petitioner's building for demolition, he filed W.P.No.5359 of 2013 and that this Court, by interim order, dated 21.02.2013, in the said writ petition, directed respondent No.5 not to undertake any demolition. However on 08.01.2016, respondent No.5 has issued the impugned notice alleging that the petitioner has encroached upon public road to an extent of 33.82 sq.mtrs. and he was accordingly, called upon to remove the said encroachment within seven days of receipt of the said notice, failing which the construction will be removed at his expense. On receipt of the said notice, the petitioner has caused a legal notice, dated 14.12.2015, issued to respondent No.5, wherein he has, *inter alia*, denied the encroachment of public road. The petitioner further averred that without considering the said notice, respondent No.5 is attempting to demolish his building.

In his affidavit, the petitioner, *inter alia*, pleaded that as per the information given by respondent No.3, the road, which passes in front of his building, is included in the National Highway and that therefore, respondent No.5 has no jurisdiction to issue the impugned notice.

While construing the provisions of Section 192 of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act'), this Court, by common order, dated 16.11.2015, in WP.No.37161 of 2015 and batch, held that the principles of natural justice shall be read into this provision and that therefore, the Municipalities cannot remove any structure without issuing show cause notice and considering the explanation, if any, filed by the owner of such structure.

Therefore, since no show cause notice has been issued by

respondent No.5, it is deemed appropriate that the impugned notice itself shall be treated as such. The petitioner is permitted to submit a detailed explanation raising all the legally permissible grounds against the proposed demolition, including the one relating to lack of jurisdiction by respondent No.5, within a period of two weeks from the date of receipt of a copy of this order. Respondent No.5 shall consider the said explanation, pass a detailed speaking order, before proceeding with further action in pursuance of the impugned notice and communicate the same to the petitioner. Till this process is completed, respondent No.5 shall not demolish any part of the petitioner's building in pursuance of the impugned notice.

Subject to the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P.No.2711 of 2016 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

27th January, 2016
GHN