

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.24822 of 2012

ORDER:

Heard Mr. M. Ram Mohan Reddy for petitioner, the Assistant Government Pleader for respondent No.1 and Mr. G. Narender Reddy for respondent No.2.

2. Petitioner challenges the communication No.Nil dated 30.07.2012 of second respondent directing petitioner to remove the clay ramp and also unauthorized construction on northern side of petitioner's house within four days as illegal, violative of principles of natural justice and unconstitutional.

3. The second respondent issued provisional order under Rule 75(1)(a)(i, ii, iii) of the Andhra Pradesh Gram Panchayat Building Rules, 1973 (for short 'the Rules'). On 08.04.2011, admittedly, the petitioner has submitted explanation denying, firstly, unauthorized construction of house on northern side and secondly, laying a mud ramp across the road. Petitioner to stay clear from the accusation of unauthorized construction or encroachment requested for survey of petitioner's house and demarcation of boundaries in his presence. Petitioner further replied that, if a violation is noticed in the enquiry/survey conducted in his presence, he is prepared to obey the order of second respondent, therefore he complains that without conducting survey the second respondent issued communication impugned in the writ petition.

4. The grievance of petitioner is that, on a Prajavani petition, the issue of removing alleged unauthorized construction of building or ramp is taken up and the petitioner was not afforded opportunity to prove that the petitioner has not constructed contrary to sanctioned plan or a ramp across the road.

5. The second respondent filed detailed counter affidavit explaining various steps taken before issuing the provisional order under Rule 75 of the Rules, enquiry conducted thereafter and submits that in the facts and circumstances of this case, no exception to impugned proceeding can be taken.

6. I have perused the material available on record and taken note of the reply of second respondent. Having regard to the order I propose to pass in the writ petition, I am not examining the merits or otherwise of the reply given by second respondent.

7. The fact of the matter is, the provisional order is passed directing removal of alleged encroachment. The petitioner requested for a survey in his presence and during the survey, the petitioner agreed to place documentary evidence in support of his assertion of right and title to the petition property. Petitioner has further gone on record by stating that he is prepared to obey the order if the charge of unauthorized construction or ramp is established in his presence. This Court is of the view that the second respondent to ensure fairness in action ought to have conducted enquiry in the presence of the petitioner and taken appropriate decision as the circumstances warrant.

8. On 09.08.2012, the proceeding impugned in the writ petition was suspended. Having regard to suspension of proceeding dated 30.07.2012 and more particularly, the reply of petitioner dated 08.04.2011, I am satisfied the writ petition can be disposed of by this order.

1. The second respondent is directed to issue notice of enquiry survey within four (4) weeks from the date of receipt of copy of this order.
2. The petitioner is given two (2) weeks time from the date of receipt of copy of this order to file documents on which the petitioner claims right, title and possession to the property, the plan for which sanction of Gram Panchayat was sought for and sanctioned plan of second respondent.
3. The second respondent with the help of survey determines the width of the road, the property claimed by petitioner and subject to the outcome of such survey, further necessary action for removal of unauthorized construction as well as ramp is taken.
4. The exercise directed to be carried out by this order shall be undertaken and completed within three (3) months from the date of receipt of copy of this order. Till such time, the interim order dated 09.08.2012 is directed to be continued.

The writ petition is disposed of. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

January 17, 2017
DSK