

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.514 OF 2009

ORDER:

Heard Mr.Ch.Anjaneyulu for petitioner, learned Assistant Government Pleader for respondents 1 to 3 and Mr.V.Hari Haran for 4th respondent.

The petitioner challenges order No.E1/2825/Phase-III dated 16.10.2008 issued by 2nd respondent in respect of house bearing No.1-26 situated at Eligaid Village and Mandal, Karimnagar District, as illegal, arbitrary and violative of principles of natural justice.

The admitted circumstances of the case are that petitioner is the owner of premises bearing No.1-26. On 16.10.2008, the respondent allotted a house for construction under a welfare scheme existing then. The petitioner based on the allotment order dated 16.10.2008 demolished the old construction and started constructing a new house at the same place. On 05.12.2008, the 4th respondent complained to 2nd respondent that the petitioner is constructing the house without maintaining setbacks on the northern side of the building by encroaching upon the 10 feet width road. The complaint was got examined and a report was received on 13.12.2008. Basing on the complaint dated 05.12.2008 and the report dated 13.12.2008, the 2nd respondent directed the Special Officer (Housing), Karimnagar as follows:

“Therefore, you are requested to issue necessary instructions to the Asst.Engineer (Housing), Eligaid Mandal to restrict the constructions by the (3) individuals as per the orders of this office referred in 2nd cited leaving road and for construction of (2) houses at the building line

of Sri Veeramallu and 3rd house by Smt.Katla Sharadha w/o Satyanarayana by leaving (2) feet set back towards lane under dispute. This may be ensured at the time of supervision of works from time to time and also at the time of payment of bill. Any deviation to these orders shall be allowed by the beneficiaries.”

Thereafter, the 1st respondent issued order impugned in the writ petition. The 1st respondent issued directions to the Extension Officer, Elagaid to ensure that 2 feet set back is maintained by petitioner while constructing the building. Hence, the writ petition.

On 20.01.2009, the order dated 15.01.2009 was stayed by this Court and on 14.03.2012, the interim order was made absolute by dismissing the vacate stay petition filed by 4th respondent. I deem it appropriate to refer to the reasons that weighed with my learned brother to make the interim order absolute which reads thus:

“This Court by order dated 20.01.2009 granted interim stay of proceedings dated 15.01.2009 of respondent No.1, whereby he directed that respondent No.3 shall ensure that the petitioner leaves a set back of two feet while constructing the house under INDIRAMMA scheme. The petitioner, apart from relying upon panchayat resolution which decided that the width of the lane in which the petitioner is constructing house can be maintained at 9 feet as against the originally envisaged 10 feet width, placed reliance on two photographs which show that she is constructing the building in perfect alignment with the existing building without protruding even an inch into the street. In view of this material, I find balance of convenience and irreparable injury in favour of the petitioner for continuing the interim order”.

At the time of hearing, learned counsel for the petitioner submits that the petitioner has already completed the construction of house and is in occupation of the same. He further submits that

had the 2nd respondent issued notice to petitioner on the complaint of deviation of either set back or encroachment of construction on to the road, the petitioner would have certainly explained that the house now constructed is substantially in accordance with the house demolished and on account of not issuing opportunity, the petitioner is subjected to prejudice and on that short ground, the communication is liable to be set aside.

The Assistant Government Pleader (Panchayat Raj) submits that the writ petition filed is premature; that the order dated 15.01.2009 is substantially directed against the Extension Officer and as and when the Extension officer acts in the matter, the petitioner could have approached this Court. He, however, to the pointed query of the Court, admits that the communication dated 13.12.2008 or the order dated 15.01.2009 is without notice to petitioner.

Mr. Hari Haran contends that the northern side road is 10 feet width and now the petitioner is encroaching upon road by one foot. The house of petitioner is a corner house and encroachment on to road by one foot or not following the set backs would cause inconvenience to other residents of the locality. The objection is merely noted, for the very same objection was stated in the complaint dated 05.12.2008. The communications could not be sustained by respondents 1 to 3. On the admitted fact position viz., that the construction is completed and secondly the proceeding dated 13.12.2008 or the order dated 15.01.2009 is issued without notice to petitioner, these are set aside. If the

petitioner has encroached on to the road or undertaken construction contrary to rules, it is always open to the authority to act in accordance with law.

The writ petition is ordered as indicated above. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

19th January, 2016
Lrkm

S.V.BHATT, J

