

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.10198 OF 2017

ORDER:

The order, dated 07.03.2017, passed by the 2nd respondent, cancelling the building permission granted in favour of the petitioner is challenged before this Court.

One of the principal grounds on which the order dated 07.03.2017 is challenged before this Court is violation of principles of natural justice apart from non-consideration of alleged explanation dated 15.03.2017 submitted by the petitioner. Learned counsel for the petitioner submits that on earlier occasion petitioner approached this court by filing W.P.No.8013 of 2017 and this Court interdicted the respondents from interfering with the construction, as long as the permission granted in favour of the petitioner is subsisting. With a malafide intention respondent authorities passed the order dated 07.03.2017, which was served on the petitioner on 16.03.2017. Learned counsel for the petitioner further submits that pursuant to the orders of this Court in W.P.No.8013 of 2017, the 2nd respondent has passed the impugned order on 07.03.2017 ignoring the explanation dated 15.03.2017 submitted by the petitioner and the same has been sent to the petitioner on 15.03.2017. It is the case of the petitioner that at the instance of the 3rd respondent, respondent authorities have made the impugned order without considering the material on record and even without considering the explanation submitted by the petitioner.

On the other hand, learned standing counsel for the 2nd respondent submits that the petitioner is playing fraud and playing with the system and further he submits that after coming to know

about the impugned order petitioner submitted the alleged explanation dated 15.03.2017 and by the time it reaches to the Commissioner's table, it takes about 2 to 3 days, and for that reason the alleged explanation dated 15.03.2017 did not find place in the impugned order.

Learned counsel appearing for the 3rd respondent points out that the petitioner had played fraud on the respondent corporation and obtained the building permission by misrepresenting the facts, particularly by showing the more extent of area than he really entitled to. He would also take this Court to the Gift Settlement Deed, which has been executed in favour of the petitioner and points out that the site shown in the gift settlement deed is much smaller than the site petitioner had shown, for the purpose of obtaining the building permission. It is also the contention of the learned counsel for the 3rd respondent that the passage between the petitioner site and the 3rd respondent site has been shown as property belonging to the petitioner and thereby the permission obtained by the petitioner for construction of 1+4 floors, in normal circumstances, is a violation and would not have been entitled for construction of four floors. Both the learned standing counsel as well as learned counsel for the 3rd respondent prayed for dismissal of the writ petition contending that the petitioner does not have any case and he has played fraud on the system.

Having considered the respective submissions this court is of the opinion that it is not necessary for this Court to enter into the factual controversy, which has been espoused by both the learned counsel. In the impugned order a reference has been made to the petitioner's letter dated 06.03.2017 seeking ten days time to

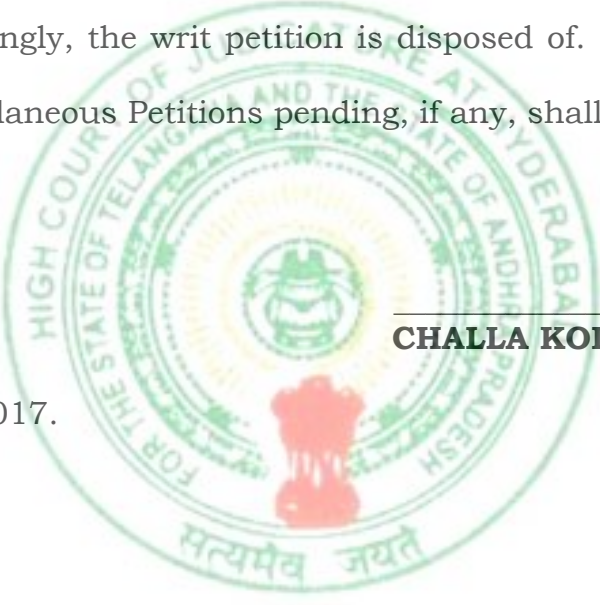
submit a detailed reply. Adverting to the said letter, in the impugned order the letter dated 07.03.2017 has been referred to wherein the 2nd respondent intimated that the request of the petitioner vide letter dated 06.03.2017 for grant of ten days time has been rejected. On the same day the impugned order alleged to have been made i.e., on 07.03.2017. If the 2nd respondent is not inclined to grant 10 days time as sought by the petitioner, there is a duty cast on the 2nd respondent to intimate the said fact and further directing the shorter time frame or atleast the day on which the petitioner can appear before them for making application. However, the impugned order as well as rejection for granting time is made on the same day. In other words, there is utter violation of principles of natural justice in passing the impugned order.

It is brought to the notice of this court that petitioner had received another intimation dated 20.03.2017 from the 2nd respondent by making a reference to the objections filed by the petitioner on 15.03.2017, stating that in view of the orders of this Court in W.P.No.8013 of 2017, dated 08.03.2017, the explanation submitted by the petitioner cannot be considered. In the light of the conclusion arrived at by this Court that the impugned order dated 07.03.2017, has been made in utter violation of the principles of natural justice, the same is liable to be set aside.

However, it is contended by the learned counsel for the petitioner that the petitioner had already submitted a detailed explanation on 15.03.2017. In the circumstances, the 2nd respondent shall pass a fresh order after considering the explanation submitted by the petitioner on 15.03.2017 and in that process shall also give opportunity of hearing both to the petitioner

and the 3rd respondent to submit their respective stands in relation to the disputes on hand. It is made clear that the 2nd respondent shall pass orders strictly taking into consideration of the relevant consideration as mandated under Section 450 of the Greater Hyderabad Municipal Corporation Act, 1955, in relation to withdrawal of the permissions already granted. It is also made clear that the limited observations made in this writ petition is only for the purpose of disposal of the Writ Petition and it shall not be construed as expressing any opinion with respect to the rights of the parties.

Accordingly, the writ petition is disposed of. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.



CHALLA KODANDA RAM, J

Date:27.03.2017.
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