

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.926 OF 2003

ORDER:

This writ petition, filed under Article 226 of Constitution of India challenges the order dated 03.01.2003 passed by the appellate authority under the provisions of the Cantonment Act, 1924 in appeal No.28 of 1999. The facts and circumstances, which are relevant for the purpose of resolving the issue in the present writ petition, are as follows:

Petitioner herein claims to be the absolute owner of the plot bearing No.69, Railway Employees Cooperative Housing Society, Thokatta, Secunderabad and on the application made by the petitioner, the 1st respondent herein granted permission for construction of residential house vide proceedings CBR No.3 (1-3) dated 23.11.1998. The 1st respondent herein issued a notice under Sub Section (1) of Section 185 of the Cantonment Act, 1924 (for short 'the Act'). Against the notice dated 01.09.1999, petitioner herein also filed an appeal under Section 274 of the Act before the 2nd respondent-appellate authority. The appellate authority, by way of an order dated 10.03.2000, dismissed the said appeal. The petitioner herein assailed the said order by way of filing W.P.No.5963 of 2000 before this Court. This Court, by an order dated 07.03.2001, allowed the said writ petition and remanded the matter to the 2nd respondent-appellate authority for fresh consideration. After such remand, the 2nd respondent-appellate authority passed an order on 03.01.2003 once again dismissing the appeal filed by the petitioner. This writ petition challenges the validity and legal

sustainability of the order passed by the appellate authority, confirming the order passed by the 1st respondent dated 01.09.1999.

Heard the learned counsel for the petitioner and Sri Koteswara Rao, learned Standing counsel for the respondents 1 and 2 and Sri P.Venugopal, learned counsel for respondent No. 3.

According to the learned counsel for the petitioner, the order passed by the appellate authority on 03.01.2003, confirming the notice dated 01.09.1999 of the 1st respondent is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the Act besides being contrary to the principles of natural justice. It is further contended by the counsel for the petitioner that the order passed by the appellate authority is a non-speaking order and is not supported by the reasons, much less valid reasons. It is further submitted that though this Court in the earlier round of litigation found fault with the procedure adopted by the appellate authority in disposing of the appeal, the appellate authority repeated the same and said act cannot be countenanced.

On the contrary, it is contended by the learned Standing counsel, Sri Koteswara Rao for respondents 1 and 2 and Sri P.Venugaopal, learned counsel for the 3rd respondent that there is absolutely no illegality and there is no infirmity in the impugned action and the respondent authorities passed orders under challenge, strictly adhering to the provisions of the statute and in compliance with the principles of natural justice.

In the above background, now the issue that emerges for the consideration of this Court is:

“Whether the questioned order passed by the 2nd respondent-appellate authority in appeal No.28 of 1999 dated 03.01.2003 is sustainable and tenable and whether the same warrants any interference of this Court under Article 226 of Constitution of India?”

The petitioner herein previously filed W.P.No.5963 of 2000 against the order of appellate authority dated 10.03.2000 passed by the 2nd respondent. This Court allowed the said writ petition by way of an order dated 07.03.2001. The copy of the said order is filed along with writ petition as a material paper. A perusal of the order passed by this Court clearly and vividly discloses that this Court found fault with the appellate authority by recording that no reasonable opportunity was afforded to the writ petitioner. This Court by way of said order remanded the matter to the appellate authority for fresh consideration in accordance with law, without being influenced by any of the orders passed by the Civil Courts.

Obviously, after the said remand, the 2nd respondent-appellate authority passed the impugned order.

It is a settled and well established proposition of law, as laid down in ***The Siemens Engineering and Manufacturing Co. of India Ltd., v. The Union of India and another***¹, that every quasi judicial order must necessarily be supported by reasons. That the rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

¹ AIR 1976 Supreme Court 1785

Coming to the impugned order, the appellate authority, except referring to the contentions advanced on behalf of the petitioner and the respondents, did not make an endeavour to consider the validity of the same and failed to record any valid reasons, which is a *sine qua non* for arriving at the conclusions. The same is sufficient for setting aside the order under challenge.

For the aforesaid reasons, the writ petition is allowed, setting aside the order dated 03.01.2003 passed by the 2nd respondent in appeal No.28 of 1999 and appeal stands restored and is remanded to the appellate authority for fresh consideration in accordance with law, after giving notice and after giving opportunity of hearing to all the stakeholders. Till the said exercise attains finality, the interim order dated 23.01.2003 passed by this Court in WPMP.No.1188 of 2003 shall continue. No order as to costs.

As a sequel, miscellaneous petitions, pending, if any shall stand closed.

A.V.SESHA SAI, J

03.07.2017

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