

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

W.P.Nos.28235 and 28267 of 2008

COMMON ORDER:

Since the petitioners in these two writ petitions share an identical grievance, this Court deems it appropriate to dispose of the writ petitions by way of this common order.

2. Heard the learned counsel for the petitioners Sri Sai Gangadhar Chamarty and the learned Government Pleader for Irrigation for the respondents.

3. According to the petitioners, they are the absolute owners and possessors of the lands admeasuring Ac.1-08 cents and Ac.2-06 cents of land situated in R.S.No.238 of Peddapulipaka Village, Penamaluru mandal, Krishna District, having purchased the same under registered sale deeds.

4. In the present writ petitions the petitioners herein assail the Notice Nos.87 and 89 of even date dated 10.12.2008, issued by the Assistant Engineer, R.C. Section, Vijayawada/first respondent herein asking the petitioners to stop the manufacture of bricks.

5. Learned counsel for the petitioners raised two contentions in the writ petitions, namely, (1) the first respondent herein did not issue any notice prior to resorting to the impugned action and the same is violative of principles of natural justice and (2) the first respondent is not the competent authority under the provisions of the Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884.

6. This Court, while ordering *Rule Nisi* on 26.12.2008, granted interim orders in WPMP.No.37010 of 2008 and 37046 of 2008, directed the

respondents herein not to interfere with the bricks manufacturing business of the petitioners in the subject survey numbers, without following the due process of law.

7. A counter affidavit deposited by the Assistant Engineer, R.C. Section, Vijayawada is filed. The said counter affidavit seeks to justify the impugned action in terms of Sections 17 and 18 of the Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884. The said provisions of law read as under:

“Section 17:

The Conservator of Rivers may do any acts in connection with any river to which this Act has been applied which may appear to him to be necessary to prevent erosion or breach of embankments, encroachments by the stream or danger to life or property, and for such purpose he may alter the course of any such stream. Provided that compensation shall be made to any person who shall sustain any damage by reason of any act authorized by this section. The Conservator shall furnish the Collector of the district with a report of every act done by him under this section.

Section 18:

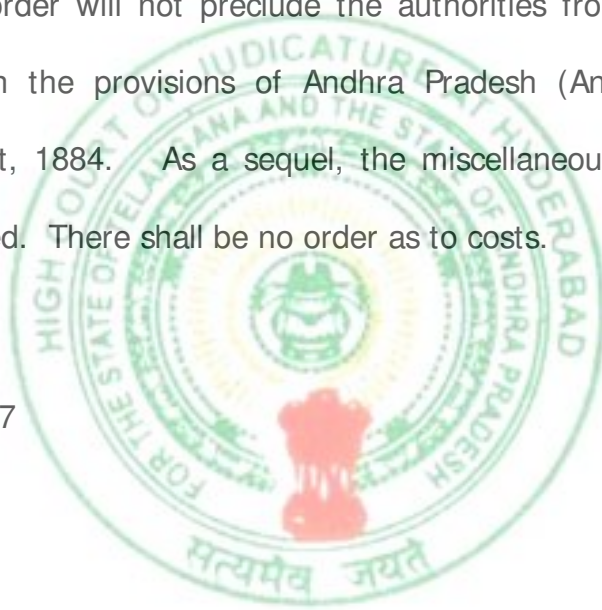
All or any of the powers conferred upon the Conservator or Rivers by the preceding section may be exercised by such of his subordinates as may be nominated by him. Provided such nomination be notified in the gazettes of the district in which any part of the river is situated.”

8. The said provisions of law specifically confer power on the Surveyor of Rivers and the first respondent is not admittedly the Surveyor of River nor is notified to discharge the functions of the surveyor of rivers. Therefore, this Court is of the opinion that the impugned order suffers from inherent lack of jurisdiction.

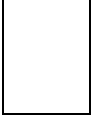
9. On the second contention of the learned counsel for the petitioners with regard to non-issuance of the notice, the counter is absolutely silent. It is a settled law that any action which has civil consequences must necessarily be preceded by a notice and opportunity to the parties likely to be effected by such action and in the instant case the same is followed in breach. Therefore, on these two grounds the writ petitions are liable to be allowed.

10. For the aforesaid reasons, the writ petitions are allowed, setting aside the Notice Nos.87 and 89 of even date dated 10.12.2008, issued by the Assistant Engineer, R.C. Section, Vijayawada/first respondent herein. However, this order will not preclude the authorities from taking action in accordance with the provisions of Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 04.07.2017
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A.V.SESHA SAI, J



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Dated: 04.07.2017

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