

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

WRIT PETITION No.29917 of 2017

ORDER:

An order bearing B.A.No.17/2016-G1, dated 29.08.2017, issued by the second respondent is under challenge in the present writ petition.

2. Heard Sri Nagaraju Naguru, learned counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development (A.P) for respondent No.1 and Sri Md.Saleem, learned Standing Counsel for respondent Nos.2 and 3.

3. In the affidavit filed in support of the writ petition, the petitioner stated that he succeeded to the ancestral varanda house bearing D.No.27/481, situated at Rameswaram, Proddatur Town and Mandal, Y.S.R. Kadapa District, by way of a registered partition deed executed by his uncle. He further stated that he approached the second respondent seeking permission for reconstruction of the house and, accordingly, the second respondent accorded permission vide proceedings B.A.No.17, dated 27.02.2016. He further stated that one Palla Venkata Subbaiah, who is neighbour of the petitioner, filed O.S.No.84 of 2010 on the file of the Principal Junior Civil Judge, Proddatur against the petitioner and others for injunction and, when he failed to get any order in the said suit, said Palla Venkata Subbaiah insisted M.Venkata Subbaiah and 7 others to file a writ petition before this Court and they filed W.P.No.38388 of 2016. He further stated that the said writ petition was disposed of at the admission stage on 14.11.2016 and the petitioner did not get any notice in the said writ petition.

4. Learned counsel for the petitioner submitted that without affording any opportunity of hearing to the petitioner, the second

respondent issued the impugned notice contrary to the order of this Court in WP.No.38388 of 2016. A copy of the order in WP.No.38388 of 2017 is placed on record.

5. It is evident from the order in W.P.No.38388 of 2016 that M.Venkata Subbaiah and 7 others filed the said writ petition for a direction to the respondents therein to take action against the alleged illegal constructions made by the petitioner herein. The said writ petition was disposed of by this Court on 14.11.2016 and the operative portion of the said order reads as under:

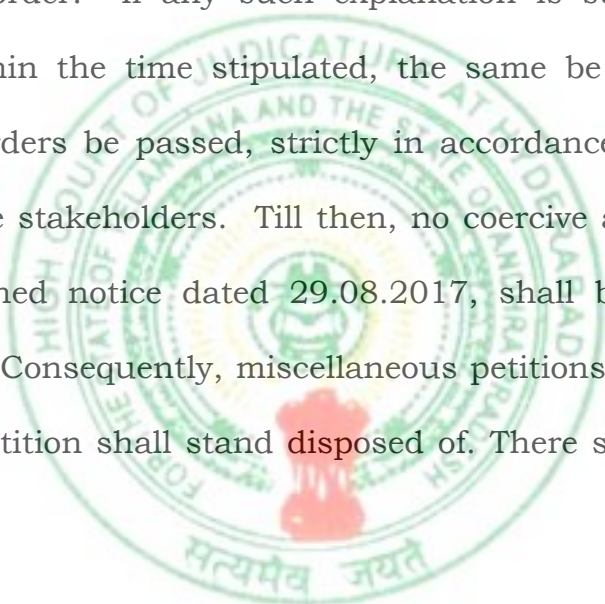
“5. In view of the same, the respondent – Municipality is directed to take further course of action with regard to the alleged illegal construction made by the 5th respondent, as expeditiously as possible, within a period of two months from today. It is always open to the 5th respondent to satisfy the competent authority that there were no deviations and he has made construction strictly in accordance with the building permission. However, disposal of this Writ Petition does not take away to establish the right of the 5th respondent against the alleged show cause notice issued to him and proposed action by the respondent – Municipality.”

6. It is also very much obvious from a reading of the said order that this Court kept it open to the fifth respondent therein i.e., the petitioner herein to satisfy the competent authority that there were no deviations and he made constructions strictly in accordance with the building permission. It is, however, submission of the learned counsel for the petitioner that pursuant to the order of this Court in WP.No.38388 of 2016, the second respondent did not give any notice and afforded any opportunity to the petitioner, issued the impugned notice.

7. On the other hand, it is submitted by the learned Standing Counsel for respondent Nos.2 and 3 that it is open for the petitioner

to submit explanation to the impugned notice dated 29.08.2017 by treating the same as show cause notice and, on receipt of the explanation, action will be taken by respondent Nos.2 and 3 in accordance with law, after hearing the petitioner and all the stakeholders.

8. In view of the above, the writ petition is disposed of, keeping it open for the petitioner to submit his explanation to the impugned notice of the second respondent dated 29.08.2017 by treating the same as show cause notice by enclosing all the documents in support of his claim, within a period of one week from the date of receipt of a copy of this order. If any such explanation is submitted by the petitioner within the time stipulated, the same be considered and appropriate orders be passed, strictly in accordance with law, after hearing all the stakeholders. Till then, no coercive action, pursuant to the impugned notice dated 29.08.2017, shall be taken by the respondents. Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand disposed of. There shall be no order as to costs.



A.V. SESA SAI, J

Date: 04.09.2017

Note: Issue CC by 07.09.2017.
B/o. TJMR