

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

WRIT PETITION No.27433 of 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India with the following relief:

“...to issue an order or direction more particularly one in the nature of writ of mandamus or any other appropriate writ declaring the action of the respondent No.2 in passing the orders dated 8-8-2017, without considering the explanation submitted by the petitioner dated 8-8-2017 and without looking into the fact that, the show-cause notice cum provisional order dated 25-7-2017 alleging that, petitioner constructed a pent house contrary to the sanction plan, on the terrace of the 2nd floor of the petitioner residential house bearing No. 1-4-293/1, situated at IB Road, Korutla proper and Mandal, Jagtial District, even though no such pent house is constructed by the petitioner and it is only an arrangement for water tank to have water facility to the said residential house and without waiting the period shown in the said show cause notice, is nothing but violative the principles of natural justice and also violative of Articles 14, 19 and 21 of the constitution of India and also the provisions of the A.P. Municipalities Act...”

2. Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development (Telangana) for first respondent and learned Standing Counsel for second respondent.

3. Vide permit No.61/2015-2016, dated 13.04.2016, the second respondent-Municipality granted permission in favour of the petitioner herein for construction of ground + 2 floors. The second respondent, vide proceedings in UCR.No.G1/UC/9/2017, dated 25.07.2017, issued a show cause under the provisions of Sections 228(1) and 217(1) of the Telangana Municipalities Act, 1965 (for

short, the Act), asking the petitioner to show cause as to why action should not be taken for removal of the alleged constructions made in violation of the sanctioned plan. Responding to the show cause notice, the petitioner submitted an explanation on 08.08.2017. Now, the second respondent passed confirmation order dated 08.08.2017, directing the petitioner to remove the constructions which were allegedly made contrary to the sanction plan, within a period of three days.

4. According to the learned counsel for the petitioner, the confirmation order dated 08.08.2017 passed by the second respondent is highly illegal, arbitrary and violative of Article 14 of the Constitution of India besides contrary to the very spirit and object of the provisions of the Act. He further submitted that though the petitioner submitted her explanation to the show cause notice, the second respondent did not consider the same and passed the impugned order in a mechanical manner.

5. Learned Standing Counsel for second respondent submitted that there is neither any illegality nor there exists any procedural infirmity in the impugned action and, as the second respondent afforded complete opportunity to the petitioner by issuing a notice in advance, the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India.

6. Absolutely there is no dispute on the controversy that in response to the show cause notice dated 25.07.2017, the petitioner submitted an explanation on 08.08.2017. In the said explanation, the petitioner stated that she did not construct the pent house as

alleged in the show cause notice and constructing only a water tank as per vastu and that there is no violation.

7. A perusal of the impugned confirmation order dated 08.08.2017 shows in clear terms that the Municipal Commissioner of the second respondent stated in the said order that the petitioner failed to show valid reasons to the show cause notice, but did not consider the representation made by the petitioner from proper perspective. Such action of the second respondent, in the considered opinion of this Court, cannot be sustained in the eye of law.

8. For the aforesaid reasons, the writ petition is allowed, setting aside the confirmation order passed by the second respondent dated 08.08.2017. However, this order will not preclude the respondents from considering and passing the orders afresh by taking into consideration the representation/explanation submitted by the petitioner, after affording due opportunity to the petitioner. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

Date: 17.08.2017
TJMR