

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.22497 OF 2017

ORDER :

The case of the petitioner is that the 1st respondent allotted Plot No.25 in Survey No.108 of Narendra Nagar, Hamlet of Marripalem, Visakhapatnam, to the petitioner and in the said plot the petitioner has constructed a residential house and has been in physical possession and enjoyment of the said plot without any interference. The petitioner also paying property tax and electricity bills regularly. While so, the 2nd respondent issued proceedings in Complaint ID.No.DC/2523/2017/ACP-IV, dated 20.06.2017, asking the petitioner to remove the encroachments. Aggrieved by the same, present writ petition is filed.

Learned counsel for the petitioner submits that without any prior notice the impugned notice is issued asking the petitioner to remove the encroachments within seven days, which is in violation of principles of natural justice.

On the other hand, Sri S.Laxminarayana Reddy, learned Standing counsel appearing for respondents 2 to 4 submits that the Commissioner has power under Section 405 of the Municipal Corporation Act, 1979 to remove the encroachments on the roads. He also submits that though petitioner was allotted 60 sq.yards, he made construction encroaching 74.38 square yards in excess of 60 square yards and thereby encroached nearly 15 feet road. He also relied on the Judgment in ***Mohd.Miskinavelli and others v. Visakhapatnam Municipal Corporation***¹.

¹ 2003 (2) ALD 541

In this case it is to be seen that admittedly petitioner was allotted 60 square yards of land and according to him he made construction in 60 yards. But the respondent authorities have issued impugned notice stating that the petitioner has encroached the land to an extent of 74.38 square yards and directed the petitioner to remove the constructions in the encroached portion within seven days. The respondent Corporation by exercising power under Section 405 of the Municipal Corporation Act, 1955 issued the impugned notice.

Section 405 of the Municipal Corporation Act reads as follows;

“ 405. Commissioner may without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of Act:- The Commissioner may, without notice, cause to be removed__

- (a) any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature, or any fixture which shall be erected or set up on or upon or over any street, any open channel, drain, well or tank contrary to the provisions of this Act.;
- (b) any stall, chair, bench, box, ladder, board or shelf, or any other thing whatever placed, deposited, projected, or suspended, in, upon, from or to any place in contravention of this Act;
- (c) any article whatsoever hawked or exposed for sale in a public place or in any public street in contravention of the provisions of this Act and any vehicle, package, box or any other thing in or on which such article is placed.”

This Court in ***Mohd.Miskinavelli and others v. Visakhapatnam Municipal Corporation*** (supra 1) categorically held while interpreting Section 405 of the Municipal Corporation Act that encroachments on public roads can be removed even

without issuing any notice. As such, the issuance of impugned notice cannot be faulted. If the petitioner has not made any encroachments and has confined himself to construct within 60 square yards as allotted to him, the petitioner would not have any grievance regarding issuance of any notice.

In view of the above facts and circumstances, I do not see any reason to entertain the writ petition. However, the respondents are at liberty to remove the encroachments made by the petitioner in excess to the allotted land by leaving the construction made by the petitioner within 60 square yards which was allotted to him. It is alleged in the writ affidavit that the 5th respondent has made construction illegally by encroaching 130 square yards of land. In view of the same, if anybody encroach the public road it is always open for the respondent Corporation to take action in accordance with law for protecting the public road.

With the above observations, the writ petition is dismissed.
No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

07.07.2017
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