

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.39130 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to pass an order or writ particularly one in the nature of the writ of Mandamus declaring the action of the respondent No.2 in revoking the petitioner's building permission vide Roc No. G1/3026/W31/1084/2017 dated 09-11-2017 without issuing any notice or opportunity, without jurisdiction as illegal, arbitrary and contrary to law and set aside the same and consequently direct the 2nd respondent not to interfere in the construction work of the petitioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. I have heard the submissions of Sri *P.Lakshma Reddy*, learned counsel appearing for the petitioner, the learned Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent, Sri *N.Praveen Kumar*, learned Standing Counsel appearing for the 2nd respondent, and of Sri *M.Damodar Rao*, learned counsel appearing for the 3rd respondent. I have perused the material record.

3. By the notice impugned in this writ petition, the Commissioner, Mancheri Municipality, Mancheri District, 2nd respondent herein, while seeking the explanation of the petitioner within seven (07) days in the matter of revocation of the building permit granted to the petitioner, *inter alia* stated in the last paragraph that the building sanction proceedings issued *vide* Proc.Roc.No.3026/W31/2017/1084, dated 29.07.2017, are revoked till final judgment is passed in the civil

Appeal Suit A.S.No.625 of 2006. Aggrieved thereof, the petitioner filed this writ petition.

4. Learned counsel for the petitioner submits that in the impugned revocation orders, the Commissioner has only referred to the contentions of the objector, i.e., the 3rd respondent herein, but did not give an opportunity of being heard to the petitioner and did not seek his explanation before the order is passed and that the order of revocation is passed while seeking simultaneously the explanation and, therefore, the impugned notice may be set aside and the petitioner may be permitted to carry out the constructions, subject to the result of the civil proceedings before the civil Court and that the petitioner is prepared to undertake that in the event of his failure to succeed in the civil proceedings, he will not claim any equities and cost of constructions, as the property involved is about Ac. 2.00 and the share being claimed by the opposite party is only 1/4th of the said property.

5. Learned Standing Counsel appearing for the 2nd respondent Municipality would submit that the revocation order, while seeking explanation of the petitioner within seven (07) days from the date of receipt of notice, dated 09.11.2017, is sustainable under facts and law.

6. Learned counsel appearing for the 3rd respondent brings to the notice of the Court Section 344(6) of the Municipalities Act and would submit that the authority is competent to revoke the building permit, which was obtained by misrepresentation and fraud and give an opportunity to show cause against such revocation or suspension and, therefore, while seeking explanation by way of a show cause

notice, simultaneously a revocation order also can be passed and, therefore, the order is sustainable and that the petitioner, instead of giving explanation to the show cause notice, approached this Court and filed this writ petition and, hence, this writ petition is premature.

7. I have given thoughtful and earnest consideration to the facts and submissions. In the considered view of this Court, when an explanation was sought within seven (07) days from the date of receipt of impugned notice, dated 09.11.2017, the Commissioner, Mancherial Municipality, ought not have revoked the building permit, that too till final judgment in the civil suit A.S.No.625 of 2006. The said observation in the impugned notice left nothing else to be decided by the Commissioner and, therefore, the direction to the petitioner to submit explanation within seven (07) days from the date of receipt of the notice, in view of the said order is only an idle ceremony. In that view of the matter, this Court is of the considered view that this writ petition can be disposed of with appropriate directions.

8. In the result, the Writ Petition is disposed of; and, the orders in the impugned notice revoking the building permit of the petitioner till the judgment is passed in A.S.No.625 of 2006 is set aside, while directing the parties to treat the same as a show cause notice. Accordingly, the petitioner is directed to give an explanation to the show cause notice, dated 09.11.2017, within a period of two (02) weeks from the date of receipt of a copy of this order, by treating it as a show cause notice; on the petitioner giving such an explanation, the Commissioner, Mancherial Municipality, 2nd respondent herein, shall consider and dispose of the same, in strict accordance with procedure established by law, however, within a period of three (03) weeks from

the date of receipt of such explanation, nonetheless, after affording an opportunity of hearing to the petitioner as well as the 3rd respondent; and, communicate the decision taken thereon to the petitioner as well as the 3rd respondent within a week thereafter. In view of the fact that civil proceedings are pending, this Court is of the considered view that the contention of the petitioner that the petitioner can be permitted to make constructions till the Commissioner completes the above said exercise need not be countenanced. Accordingly, the petitioner is directed to maintain absolute *status quo* without making any constructions in the subject property till the Commissioner completes the exercise afore-stated and takes a decision in the matter, as directed supra.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 12th December, 2017

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