

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 38012 OF 2017

ORDER:

This writ petition is filed seeking writ of mandamus declaring the show-cause notice issued by the 3rd respondent dated 06.11.2017 as illegal, arbitrary and without jurisdiction and also not in accordance with the Rules relating to the functions of Panchayat Secretary under Section 268 r/w Section 36(6) of A.P.Panchayat Raj Act, 1994 under G.O.Ms.No.199, dated 18.05.2007 and consequently to direct the respondents not to take any coercive steps including demolition of the subject houses of the petitioners in Sy.No.936/1, 936/14 and 936/16 of Vaderu Grama Panchayat, Chirala Mandal, Prakasam District and consequently to set aside the same.

It is the case of the petitioner that the 3rd respondent issued impugned notice dated 06.11.2017 straight away stating that the petitioner has to remove the illegal constructions.

Heard learned counsel for the petitioners and Sri G.Seshadri, learned Standing Counsel for respondents 2 and 3.

Learned counsel for the petitioners submits that though the impugned notice dated 06.11.2017 is termed as show-cause notice, but in fact, it is final notice directing the

petitioners to remove the structures, without giving an opportunity of hearing them, which is in violation of principles of natural justice. He also states that the Panchayat Secretary is not competent to issue such notice, as the functions of Panchayat Secretary in terms of G.O.Ms.No.199, Panchayat Raj & Rural Development; dated 18.05.2017 is only to report the encroachments and misuse of panchayat lands to higher authorities.

On the other hand, Sri G.Seshadri, learned Standing Counsel for respondents 2 and 3 submits that the impugned notice may be treated as show-cause notice and petitioners can file explanations to the same.

A perusal of the impugned notice dated 06.11.2017 goes to show that it is very vague. As rightly contended by the learned counsel for the petitioners, the Panchayat Secretary has no jurisdiction to issue such notice as per G.O.Ms.No.199, dated 18.05.2007. Since the impugned notice is vague, wherein the petitioners are directed to remove the structures and is not preceded by prior notice, the same is liable to be set aside.

Having regard to the above facts and circumstances, the impugned notice dated 06.11.2017 is set aside. However, it is open for the competent authority to issue fresh notice to the petitioners in accordance with the Rules and take action accordingly. Till such exercise is done, the respondents

shall not take any coercive steps against petitioners for removal of the subject structures.

Accordingly, the writ petition is allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of.

A.RAJASHEKER REDDY,J

10-11-2017

Note: Issue CC by Monday

B/o. kvs



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Date: 10.11.2017

kvs

