

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.34734 OF 2017

DATED : 26.10.2017

Between :

K.Satyanarayana S/o.Late K.Subramanyam,
Aged about 60 yrs, C/o.Satya Kumar,
R/o.9-1-63/2, New Resuvani Palem,
Visakhapatnam, Visakhapatnam District & another.

.. Petitioners

And

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Municipal Administration and Urban Development Department,
Secretariat, Velagapudi,
Amaravathi, Guntur District & others.

... Respondents



This court made the following :

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ORDER :

This writ petition is filed challenging the show cause notice dated 16.09.2017 issued by the Commissioner, Greater Visakhapatnam Municipal Corporation. In the said show cause notice, it is alleged that petitioners obtained building permission to undertake construction of stilt floor for parking, ground and four upper floors in D.No.45-25-3, in Sy.No.43P of Akkayyapalem, Dondaparthi Village, Ward No.33, Visakhapatnam showing portion of land which does not belong to them. It appears the said building permission was granted on an online application filed by the petitioners. On physical verification of building permission granted to the petitioners, the Commissioner noticed that the area on which the building permission was obtained is affected by Urban Land Ceiling Act and a portion of the land belongs to Railways. The impugned notice was issued in exercise of power under Section 450 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the HMC Act') which is also applicable to Visakhapatnam Municipal Corporation. Through advocate detailed explanation was filed by the petitioners on 10.10.2017. At this stage and even before a decision is made by the Commissioner, this writ petition is filed.

2. Heard learned counsel for the petitioners, Learned Assistant Government Pleader for Revenue, learned Standing counsel for the Greater Visakhapatnam Municipal Corporation.

3. Though learned counsel for the petitioners made elaborate submissions, this Court is not inclined to go into the merits of the contentions urged. Having regard to the show cause notice issued, the Court asked learned counsel for the petitioners to clarify as to whether Commissioner is competent to issue notice under Section 450 of the HMC Act.

4. Learned counsel for the petitioners though submits that Commissioner is competent to issue notice under Section 450 of the HMC Act, sought to contend that reasons mentioned in the notice are not valid and therefore notice ought not to have been issued. Building permission having been granted on verification of documents submitted, this notice could not have been issued and therefore amounts to improper exercise of power.

5. At this stage, it is appropriate to note the provision in Section 450 of the HMC Act. Section 450 of the HMC Act, read as under :

Power of Commissioner to cancel permission on the ground of material misrepresentation by applicant :-

“If at any time after permission to proceed with any building or work has been given, the Commissioner is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 428 or 433 in the further information if any, furnished, he may cancel such permission and any work done thereunder shall be deemed to have been done without his permission.”

6. A bare reading of the provision makes it clear that after the building permission is granted, if the Commissioner is *prima-facie*, satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in

the notice given or information furnished under Sections 428 or 433 in the further information if any furnished, he may cancel such permission.

7. It appears from a bare reading of the show cause notice that according to the assessment of the Commissioner, the land on which the building permission applied also includes the land which is covered by the Urban Land Ceiling Act provisions and also a portion of the land belong to Railways. Therefore, it cannot be said that the Commissioner has erroneously exercised power under Section 450 or is without jurisdiction, in order to entertain the writ petition at this stage and even before a decision is made by the Commissioner on the explanation filed.

8. Since Commissioner has jurisdiction to issue notice under Section 450 of the Act, this Court is not inclined to entertain the writ petition at this stage and scuttle the process of taking decision by the Commissioner vested in him under Section 450 of the Act. It cannot be said that the Commissioner will not appreciate the stand expressed by the petitioners in their response to the show cause notice and it cannot be said that petitioners are remediless as and when decision is made by the Commissioner.

9. Thus, the Writ Petition is dismissed leaving it open to petitioners to work out their remedies as available in law, if any adverse decision is made by the Commissioner, in pursuant to the impugned show cause notice.

10. Since in pursuant to the show cause notice issued on 16.09.2017, petitioners have already filed their explanation, the Commissioner shall pass final orders within four (4) weeks from

the date of receipt of copy of this order. It is made clear that dismissal of the writ petition can not come in the way of Commissioner considering the explanation filed by the petitioners. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

26th October 2017
Rds

P.NAVEEN RAO,J

