

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

W.P.No.34624 of 2017

ORDER:

Heard Sri N.Siva Reddy, learned counsel for the petitioner and Sri Ancha Panduranga Rao, learned Standing Counsel for 2<sup>nd</sup> Respondent-Corporation.

2. Notice bearing U.C.No.20/2017-TPS-II dated 5.10.2017 issued by the Assistant City Planner, Kakinada Municipal Corporation in purported exercise of power under Sections 452, 405, 406 of Hyderabad Municipal Corporation Act, 1955, directing the petitioner herein to show cause in writing within (7) days as to why the A/c sheet shed or such water supply plant or such business should not be removed, is under challenge in the present writ petition.

3. The principal contention advanced by the learned counsel for the petitioner is that the said show cause notice dated 5.10.2017 is not in accordance with the provisions of Section 452 of Hyderabad Municipal Corporation Act, 1955. Section 452 of the said Act, reads as under:

"Section 452 - Proceedings to be taken in respect of building or work commenced contrary to Act or bye-laws

(1) If the erection of any building or the execution of any such work as is described in Section 433 is commenced or carried out contrary to the provisions of this Act or bye-laws made thereunder, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 426 shall--

(a) by written notice, require the person who is erecting or re-erecting such building or executing such work or has erected or re-erected such building or executed such work, on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by

an agent duly authorised by him in that behalf, to show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2) If such person shall fail to show sufficient cause as required under Clause (a) or (b) of Sub-section (1), to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.”

4. While referring to the above said provision of law, it is contended by the learned counsel for the petitioner that the present notice is not in accordance with Section 452(1)(b) of the Act as the show cause notice does not disclose the date, time and place of personal hearing, so as to enable the parties to attend personally.

5. A reading of the impugned notice disclose, in clear and vivid terms, indicates that the impugned notice obviously is not in accordance with Section 452(1)(b) of the Act and the particulars as stipulated in the above provision of law are conspicuously absent in the impugned notice. Therefore, on the said ground alone, the impugned notice dated 5.10.2017 is liable to be set aside.

6. For the aforesaid reasons, the writ petition is allowed, setting aside the Notice bearing U.C.No.20/2017-TPS-II dated 5.10.2017 issued by the Assistant City Planner, Kakinada Municipal Corporation. However, it is open for the Respondent Corporation to issue a notice strictly in accordance with Section 452 and other provisions of Greater Hyderabad Municipal Corporation Act, 1955 and to proceed further as per law. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 16.10.2017  
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



16.10.2017

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