

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.35506 OF 2017

ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Panchayat Raj and Rural Development, Sri D.Ramesh, learned Standing Counsel for APCRDA, and Sri Seshadri, learned Standing Counsel for the fifth respondent-Nowlur Gramapanchayat.

The notice issued by the third respondent, vide proceedings in Rc.No.CRDA-12029(51)/22/2017, dated 17.10.2017, under Section 115 (3) of the Andhra Pradesh Capital Region Development Authority Act, 2014 (for brevity, 'the Act'), is under challenge in the present Writ Petition.

Petitioners herein claim to be the absolute owners and possessors of the lands in plot Nos.10/A & 10/A1 in Sy.Nos.800 and 801/2A of Nowluru Gramapanchayat, Mangalagiri Mandal, Guntur District and, according to them, they purchased the said properties by way of registered sale deeds. The third respondent issued a show cause notice bearing Rc.No.CRDA-12029 (51)/22/2017, dated 11.09.2017, under Section 115 (1) of the Act, calling upon the petitioners herein to show cause as to why final orders of confirmation, under sub-Section 3 of Section 115 of the Act, should not be passed, while alleging certain

encroachments of open space and illegal constructions. In response to the show cause notice, on 16.09.2017, petitioners submitted explanation through their counsel to the third respondent. Thereafter, by virtue of the order under challenge, dated 17.10.2017, the third respondent confirmed the preliminary notice issued on 11.09.2017 and directed the petitioners herein to remove the constructions.

According to the learned counsel for the petitioners, the impugned action is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 300-A of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Act. It is the further submission of the learned counsel that the third respondent herein did not consider the contents of the explanation offered by the petitioners herein and the said action is in total violation of the principles of natural justice.

Per contra, it is argued by Sri D.Ramesh, learned Standing Counsel for APCRDA, that there is no illegality nor there exists any procedural infirmity in the impugned action and, in the absence of the same, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India.

There is absolutely no controversy on the reality that, in response to the show cause notice issued by the third

respondent herein on 11.09.2017, petitioners herein submitted their explanation through their counsel on 16.09.2017. A perusal of the said explanation, which is in the form of a legal notice, clearly discloses that the petitioners herein claimed the subject properties as their absolute properties and, in support thereof, they also referred to certain registered documents.

A perusal of the impugned notice reveals that, except referring to notice got caused by the petitioners herein, the third respondent did not undertake any exercise to consider the contents of the said notice. In the considered opinion of this Court, the said action is neither sustainable nor tenable and, by any stretch of imagination, the same cannot be approved by this Court. Since the third respondent did not refer to the contents of the same in the impugned final notice, on the said ground alone, the impugned notice is liable to be set aside. In the considered opinion of this Court the matter requires re-consideration by the third respondent in accordance with law.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned notice, dated 17.10.2017, issued by the third respondent. The matter is remanded to the third respondent for fresh consideration and for passing appropriate orders, strictly in accordance with law, after considering the explanation/legal notice offered by the

petitioners herein and after giving opportunity of hearing to the petitioners herein. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

A.V.SESHA SAI,J

25th October, 2017
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