

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.43294 OF 2017

ORDER:

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

“... to issue a Writ or Writs more appropriately a Writ of Mandamus declaring the order issued by the respondent No. 2 and 3 Roc. No. 807/A1/2015 dated: 11.12.2017 in respect of Shop No. 7 situated at Santhapet Municipal Complex near Meer Mohammed Shah Quadri Dargah, Adoni, Kurnool District, A.P., is illegal, void, ultra virus and un-constitutional and violation of principle of natural justice consequently set aside the same in the interest of justice and equity and to pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. I have heard the submissions of Sri *Abdul Muqeeth Qureshi*, learned counsel for the petitioner, and of the learned Standing Counsel for Adoni Municipality appearing for respondent Nos.2 and 3. I have perused the material record.

3. The facts, which are required to be stated as a prelude to this order, in brief, are as follows:

“Earlier, a notice, dated 21.12.2015, was issued to the petitioner under the provisions of Section 194 (1) of A.P. Municipalities Act, 1965 (for brevity, ‘the Act of 1965’). The petitioner submitted a reply. However, according to the petitioner, as the said reply was not considered, he approached this Court by filing W.P.No.9470 of 2016. This Court, by order, dated

22.03.2016, disposed of the said Writ Petition. The operative portion of the order in the said Writ Petition reads thus:

“In any event, irrespective of whether the petitioner submitted his explanation or not, the second respondent – Adoni Municipality is bound to pass final orders under Section 194 (2) of the Act of 1965 before proceeding further in the matter. The Adoni Municipality shall therefore follow this procedure laid down by the statute. Pending passing of the final orders, the Adoni Municipality shall not take any coercive steps against the petitioner.”

Subsequently, on 11.12.2017, the impugned order was passed without giving an opportunity of hearing to the petitioner, *inter alia* holding that the petitioner sub-let not only the subject shop room but also three other shop rooms to third parties and directing the petitioner to vacate and hand over the subject shop room and three other shop rooms, which were originally leased out to the petitioner, within seven days of receipt of the impugned order. In the impugned order, it is also stated that on failure of the petitioner to comply with the said demand, action would be initiated. Aggrieved thereof, the petitioner is before this Court.”

4. Learned counsel for the petitioner would submit that this Court disposed of W.P.No.9470 of 2016 directing respondent No.2 - Municipality to pass final orders under Section 194 (2) of the Act of 1965 before proceeding further in the matter and that suddenly, without notice to the petitioner, the impugned order was passed on 11.12.2017, even without informing the petitioner and giving him an opportunity of hearing and therefore, the impugned order is liable to be set aside.

5. Learned Standing Counsel appearing for the respondent - Municipality would submit that when a notice was issued, it was contended that a reply was given, but a copy of the said reply was not produced before this Court in the earlier writ proceedings. However, this Court disposed of the said Writ Petition as stated by the petitioner and that the petitioner, who is obligated to produce the necessary records, like his trade licence, sales tax registration and relevant documents to show that the property is not sub-let, has failed to do so and that therefore, the Writ Petition is not maintainable. He would further submit that as per the provisions of law, the authority concerned of the Municipality is empowered to pass the impugned order by considering the representation, if any, and there is no mandate under the statute to provide an opportunity of being heard to the petitioner.

6. Having given earnest and thoughtful consideration to the facts and submissions, this Court is of the considered view that for want of providing an opportunity of hearing to the petitioner, the impugned order is liable to be set aside.

7. Accordingly, the Writ Petition is allowed and the impugned order is set aside, however, reserving liberty to respondent No.3 to pass orders afresh in the matter after affording an opportunity of personal hearing to the petitioner. The said exercise shall be completed within two weeks from the date of receipt of a copy of this order. It is made clear that on service of notice of hearing on the petitioner, if the petitioner fails to appear and submit his documents, if any, in support of his contentions, the authority

concerned is at liberty to pass appropriate orders in strict accordance with the procedure established by law.

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

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

December 26, 2017

Note: Issue C.C. by 02.01.2018.
B/o.MD

