

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

WRIT PETITION No.2808 of 2018

ORDER:

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

“.....to issue an appropriate Writ more particularly one in the nature of **WRIT OF MANDAMUS** declaring the action of the Respondent No.2 and 3 and their officials in trying to demolish the Petitioners building in the land admeasuring 400 square yards situated in R.S.No.2/3, near Door No.28-132, situated at Yenamalakuduru Village, Penamaluru Mandal, Krishna District, as illegal, arbitrary, violation of Principles of Natural Justice and violation of Articles 14, 21 and 300-A of the constitution of India and consequently direct the Respondents and their officials not to interfere or demolish the Petitioners building and pass such other order.....”

2. Heard learned counsel for the petitioners, learned Government Pleader for Municipal Administration appearing for respondent No.1, Sri D.Ramesh, learned Standing Counsel, who offers to appear for respondent No.2 and Sri G.Seshadri, learned Standing Counsel, who offers to appear for respondent No.3 from the written instructions and perused the prayer in the writ petition with supporting affidavit including written submissions of the learned Standing Counsel for the respondents.

3. It is the submission of the learned counsel for the petitioners in support of the prayer in the writ petition from the supporting

affidavit averments that petitioners are owners of 650.91 square yards in R.S.No.2/3, near Door No.28-132 of Yenamalakuduru Village, Penamaluru Mandal, Krishna District, within the boundary limits of the 2nd respondent-Capital Region Development Authority (for short 'C.R.D.A.'), represented by its Commissioner, Vijayawada and they purchased the said property by registered sale deed bearing No.8178 dated 03.11.1989 from Maganti Venkata Thanujadevi and divided the same into two plots i.e., 400 + 250.91 square yards and obtained building permission for construction of stilt, ground and 2 upper floors in 400 square yards from the 3rd respondent-Grampanchayat, Yenamalakuduru Village, vide D.Dis.No.348/2015-16, dated 17.08.2015. The petitioners through agreement of sale-cum-General Power of Attorney (for short 'G.P.A.'), dated 11.03.2016, bearing document No.1659 of 2016, sold northern side 400 square yards to Ummaleti Naga Mallikharjuna Rao, who is a G.P.A. holder of the petitioners-cum-deponent to the writ petition and pursuant to which, he is entitled to develop the said property and to sell. He started construction as per the sanction plan, which is almost at the fag end, the officials of respondent Nos.2 and 3 are trying to demolish the same for no reason even the petitioners explained including the deponent supra about they got valid permission and constructing as per norms and if at all respondents 2

and 3 are allowed to demolish without knowing the full facts, the petitioners will suffer loss and irreparable injury.

4. The written instructions submitted by the learned Standing Counsel for C.R.D.A. are that during the inspection, it is found that one Ummaleti Naga Mallikharjuna Rao was constructing three numbers of residential buildings with ground, first and second floors along with stilt floor in unapproved layout unauthorizedly. As per Section 110 of the Andhra Pradesh Capital Region Development Authority Act, 2014 (for short 'the Act'), there must be prior permission from the C.R.D.A for any construction. As per G.O.Ms.No.62, the powers delegated by this authority to the Panchayat Secretary to grant permission for construction of individual residential buildings upto ground and two upper floors and upto 1000 square metres of site area in the plots located in the approved layouts only. As per Chapter VIII, Table -17 of the A.P.Building Rules, 2017 only ground, first and second floors upto 10 metres height with the stilt floor of a building is permissible in the sites of extent 100 to 200 square metres and as the individual is constructing three residential buildings in a site area of each to an extent of 180 Square metre, stilt+ground+2 upper floors, it can be permitted. However, the construction of stilt+ground+2 upper floors without obtaining permission as per the A.P.Building Rules, 2017 cannot be permitted and a show cause notice under Section 115(1)

on 12.12.2017 including to stop construction under Section 116(1) of the Act issued for all the three residential buildings separately and the said Ummaleti Naga Mallikharjuna Rao received the same in the name of the builder and he also submitted an explanation on 14.12.2017 for the primary show cause notices supra stating that he purchased the site under reference in R.S.No.2/3, near Sai Baba Temple in Yanamalakuduru village along with the plan copies and approval details dated 17.08.2015 and he is the owner consequently of the notices, though issued in the name of Veeraiah, Watchman and he is going to remove the encroachments and the violations of the setbacks as constructing otherwise as per approved plans under the contrary and the contentions in the writ petition, thereby, not true.

5. Undisputedly, there are no individual notices either to said Ummaleti Naga Mallikharjuna Rao or to the petitioners i.e., Mokkapati Venkatanarayana and Mokkapati Satyanarayana, to whom the said Mallikharjuna Rao representing as G.P.A. for part of the property in question. Though the written instructions speak about said Mallikharjuna Rao submitted two plans pursuant to the notices served on said Veeraiah. It is, in fact, the grievance of the petitioners that these explanations not even considered, much less, by opportunity of hearing and passing any detailed order, leave about, without individual notices having contemplated by Section 115 of

the Act, the authorities, without enquiry, cannot take law into their hands. Hence, there is nothing to keep the writ petition pending, but for, disposal of the same.

6. Accordingly, this Writ Petition is disposed of, directing the respondent-authorities to issue individual notices as contemplated under Section 115 of the Act to said Ummaleti Naga Mallikharjuna Rao and to the petitioners i.e., Mokkapati Venkatanarayana and Mokkapati Satyanarayana and consider their explanations to submit pursuant thereto and pass appropriate orders in accordance with law.

Miscellaneous Petitions, if any, pending shall stand closed.

There shall be no order as to costs.

2nd February 2018

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Dr. B. SIVA SANKARA RAO, J

