

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.25853 of 2013

ORDER:

This writ petition is filed to declare the action of the 2nd respondent in not initiating further proceedings pursuant to the confirmation notice vide B.A.U.C.No.8/2012/T.P.B.O4 dt.26.11.2012 issued by the 2nd respondent in accordance with part V Chapter VI and Part VI Chapter II of the A.P. Municipalities Act, 1965 and the Rules made thereunder as illegal and arbitrary and a consequential direction is sought to direct the 2nd respondent to initiate further proceedings in respect of the building of the 3rd respondent vide Permit No.204 dated 15.10.2012 in accordance with part V Chapter VI and Part VI Chapter II of the A.P. Municipalities Act, 1965 and the Rules.

The case of the petitioner is that the 3rd respondent purchased an extent of 109-88 sq. yards under a registered sale deed dated 23.4.2003 from him and other sharers; the 3rd respondent obtained permission from the 2nd respondent to construct ground and first floor in her site vide Permit No.204 dated 15.10.2012; the construction that has to be made is only upto 81-16 mtrs., in ground floor as well as in the 1st floor; the 3rd respondent encroached the land of the petitioner and started construction of the building; complaint was made to the 2nd respondent about the encroachment of the 3rd respondent; the Commissioner, Narsaraopet Municipality got the land surveyed by Town Surveyor and Building Inspector; the Town Surveyor and Building Inspector without conducting the survey in a proper manner came to the conclusion that the land of the

3rd respondent is in accordance with her documents; against the said report, the petitioner made a representation to the Revenue Divisional Officer, Narsaraopet, who is the Special Officer; the Revenue Divisional Officer conducted an enquiry and directed the 2nd respondent to survey the land afresh after putting the neighbouring land owners on notice; petitioner filed O.S.No.367 of 2012 on the file of the Court of the Prl. Senior Civil Judge, Narsaraopet, against the 3rd respondent, her husband and the municipality and the same is pending; the 3rd respondent made constructions in violation of the sanctioned plan; the 2nd respondent issued notice dated 19.11.2012 under Section 217 (1) & (2) of the A.P. Municipalities Act, 1965; as the 3rd respondent failed to respond, the 2nd respondent issued confirmation notice dated 26.11.2012 and as the 3rd respondent proceeded with further construction, the present writ petition is filed.

An interim order was passed on 5.9.2013 directing the 2nd respondent to take all necessary steps to prevent the 3rd respondent from making any construction.

Counter affidavit has been filed by the 3rd respondent stating that the writ petition is not maintainable as the petitioner has already filed suit against him and other persons; he did not violate the sanctioned plan while making construction and that the writ petition is filed to harass the official respondents.

Heard the learned counsel for the petitioner, learned counsel for unofficial respondent and the learned Standing Counsel for the Municipality.

Learned Standing Counsel submits that according to the plan, the unofficial respondent has to construct upto 81.16 mtrs., whereas, as per the provisional order dt.19.11.2017, the unofficial respondent has constructed 91.06 mtrs., and after issuing confirmation notice dated 26.11.2012, no further steps have been taken by the unofficial respondent and that the authorities ought to have taken action under Section 228 (ii) of the A.P. Municipalities Act. Learned Standing Counsel further submits that notice was issued as there was deviation and that the same will be compounded by levying penalty. He also submits that if no action has been taken pursuant to the confirmation notice dated 26.11.2012, action will be taken in accordance with law.

In view of the facts and circumstances of the case, the Writ Petition is disposed of directing the 2nd respondent to take action pursuant to the confirmation notice dated 26.11.2012, in accordance with law, after giving opportunity to the petitioner and unofficial respondent, as expeditiously as possible, within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 20/12/2018

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