

THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No. 10675 OF 2015

ORDER:

This Writ Petition is filed to declare Memo dated 12-03-2015 of respondent No. 1 and demand notice dated 28-03-2014 of respondent No. 2 as illegal and arbitrary.

2. The case of the petitioner is that it constructed one apartment by name Arabindo Sadan in Proddatur, Y.S.R. District, between the period 2011 and 2013; that respondent No. 2 issued demand notice dated 28-03-2014 stating that the Regional Vigilance and Enforcement Unit, Kadapa, inspected the apartment and found evasion of seigniorage fee for 892 cubic meters of road metal, 821 cubic meters of sand and consumed bricks and the said demand notice further speaks that show-cause notice dated 22-07-2013 was issued to show proof of payment but the petitioner failed and therefore the petitioner is directed to pay normal seigniorage fee of Rs.81,290/- together with five times penalty of Rs.4,68,490/-; that no show-cause notice is served on the petitioner and the petitioner paid all the seigniorage fee for road metal, sand and bricks and have documents to that effect; that if the alleged show-cause notice is served on the petitioner, it would have submitted all the documents before respondent No. 2 to prove that it paid the seigniorage fee; that after receipt of demand notice, the petitioner met respondent No. 2 and produced all the documents to prove

that it paid all the seigniorage fee, to which respondent No. 2 stated that the demand notice is issued under Rule 26 of APMMC Rules 1966 and therefore he has no power to modify the same and advised to approach appellate authority and that the petitioner thereafter preferred revision before respondent No. 1 and respondent No. 1 passed the impugned order stating that he is partly convinced with the contentions of the petitioner and decided to award two times penalty.

3. Counter affidavit has been filed by respondent No. 2 stating that respondent No. 2 issued show-cause notice dated 23-07-2013 to the petitioner to produce documentary proof for payment of seigniorage fee and that as no reply has been received from the petitioner, demand notice dated 28-03-2014 is issued.

4. Heard learned counsel for the petitioner and learned Government Pleader for the respondents and perused the record.

5. With the consent of learned counsel for both parties, the Writ Petition is being disposed of at the stage of admission.

6. On 16-04-2015, this Court, while ordering notice before admission, stayed the enforcement of the impugned demand notice subject to the petitioner depositing normal seigniorage fee of Rs.81,290/- before respondent No. 2 within four weeks. The contention of the petitioner is that he did not receive any show-cause notice and had he received show-cause notice, he would have produced all the documents to prove that it has paid the

entire seigniorage fee. Learned counsel further submits that though the said issue has been specifically raised in the revision, respondent No. 1 disposed of the revision without considering the same. Learned Government Pleader passed on letter dated 25-11-2018 of respondent No. 2 along with a copy of the show-cause notice and extract showing that the show-cause notice has been dispatched to the petitioner at serial No. 1601. Even though the extract shows that the show-cause notice has been dispatched to the petitioner, no acknowledgement whatsoever has been filed to show that the same has been received by the petitioner. Learned counsel also submits that even according to the counter affidavit of respondent No. 2, show-cause notice has been issued to the petitioner but the counter affidavit does not state anywhere that the same has been received by the petitioner. Learned Government Pleader however today served a copy of the show-cause notice on learned counsel for the petitioner.

7. In view of the facts and circumstances of the case, the revisional order dated 12-03-2015 of respondent No. 1 and the demand notice dated 28-03-2014 of respondent No. 2 are hereby set aside and the matter is remanded back to respondent No. 2 for re-consideration afresh. The petitioner is therefore given liberty to file its detailed explanation enclosing all the necessary documents to the said show-cause notice within a period of two weeks from the date of receipt of a copy of this order and

respondent No. 2 is directed to consider the explanation of the petitioner and pass appropriate orders in accordance with law within a period of six weeks thereafter.

8. The Writ Petition is accordingly disposed of. Pending miscellaneous petitions, if any, shall stand closed in consequence.

KONGARA VIJAYA LAKSHMI, J.

29-11-2018

JSK

