

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26256 of 2018

O R D E R:

Heard the learned counsel for the petitioner and the learned Government Pleader for first respondent and Sri Md.Saleem, learned Standing Counsel for the second respondent Municipality.

2. Notices dated 16.04.2018 and 25.04.2018 issued by the second respondent Municipality under the provisions of Section 228 of the A.P. Municipalities Act, 1965 are under challenge in the present writ petition.

3. According to the petitioner, he is the absolute owner of the residential premises bearing Dr.No.17/82, Kalivellamma Temple Street, Venkatagiri Town, SPSR Nellore District and he got the said property by way of a Gift Deed dated 12.11.2013 said to have been executed by his mother Smt.Shaik Pyarijan. The second respondent/Municipality initiated action under Section 228 of the A.P. Municipalities Act, 1965 and issued a provisional notice vide UC.NO.4/2018 and subsequently issued another notice of confirmation vide UC.No.4/2018, dated 24.04.2018, confirming the notice issued earlier.

4. It is submitted by the learned counsel for the petitioner that the said notices were received by the petitioner only on 09.07.2018 and no opportunity was given to the petitioner herein for submitting his explanation. It is further submitted that the petitioner herein has all the documents for construction and the impugned action is only a politically motivated action.

5. In fact, according to the petitioner, he submitted representation on 12.07.2018 i.e., after receipt of the notices duly bringing to the notice of

the authorities the above said aspects. Under Section 228 of the Act, the Commissioner is empowered to issue a provisional order and it is obligatory on such officer to serve a copy of the provisional order together with a notice requiring him to show-cause within a reasonable time to be named in such notice why the order should not be confirmed and thereafter it is open for him to confirm the said order under Section 228 (3) of the Act. According to the learned counsel for the petitioner, the said mandatory provisions are followed in breach.

6. Having heard the learned counsel for the petitioner and the learned Standing Counsel and the learned Government Pleader and to have quietus for the problem, this Court deems it appropriate to allow the writ petition, by setting aside the final notice dated 25.04.2018 with a liberty to the petitioner herein to file explanation within a period of two weeks from the date of receipt of this order, and if any such explanation is offered within the time stipulated, the same be considered and appropriate final orders be passed by the second respondent, strictly in accordance with law. Pending consideration of the explanation, until final orders are passed as mentioned *supra*, no coercive action shall be taken in respect of the subject structures.

7. Accordingly, the writ petition is allowed. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:26.07.2018
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Dated: 26.07.2018

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