

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.26989 of 2016 and W.P.No.9705 of 2017

and

C.C.No.318 of 2017

COMMON ORDER:

Heard Sri P.Venugopal, learned Senior Counsel, appearing for Sri G.V.S. Mehar Kumar, learned counsel for the petitioners; and the learned Advocate General, State of Andhra Pradesh, for respondents.

W.P.No.26989 of 2016

2. The petitioner in both the Writ Petitions and in the Contempt Case is one N.Srinivasa Chakravarthy, who is the son of Nallapati Lakshminarayana. Under a registered partition deed bearing document No.6364/2015 dt.10-04-2015 between petitioner, his father and his sister, the petitioner became the owner of door Nos.10-3-12, 10-5-12 and 10-5-13 in an extent of 825.33 sq yds situated in old Sy. No.432/B corresponding to new T.S.No.772 in Narsaraopet town and Municipality, Guntur District.

3. The petitioner intended to construct a multi storied residential apartment complex in the said premises and made an *online* application 20-04-2016 and also paid the process fee therefor.

4. The Narsaraopet Municipality accorded conditional permission vide BA No.1024/0009/B/NSR/ANSTMST/2016 dt.11-05-2016 to the petitioner to construct 7 floors with parking in stilt and one floor according to the plan submitted by him. The

permission set out the conditions which the petitioner was required to fulfill.

5. According to the petitioner, he started constructing the building strictly in accordance with the said conditional permission and the plan sanctioned thereto and after the construction had come up to lintel level, an endorsement dt.13-07-2016 was issued to him demanding within seven days a sum of Rs.19,288/- and asking him to submit link documents, registered mortgage deed, encumbrance certificate and making allegation that he deviated from the sanctioned plan. On the same day, a stop work order dt.13-07-2016 was also issued and he was asked to stop construction.

6. A show cause notice dt.13-07-2016 was also issued to the petitioner stating that at the time of inspection of his site, it was observed that on its southern side, the existing road width was only 4.65 meters but the minimum width of the road is 9 meters keeping in view future road widening as per clause (4) of G.O.Ms.No.168 Municipal Administration and Urban Development (M) Department dt.07-04-2012; that future road widening required is 2.17 meters, but on the ground it was observed that only 1.45 meters was available on the southern side of south-west corner and 1.2 meters only was available on south-east corner; and the petitioner intentionally violated the clause (4) to avoid handing over site to Municipal Authorities for road widening in future. He was asked to show cause why action

should not be initiated for violation of clause (4) in two days and to stop construction until further orders.

7. Here I may refer to two clauses in the G.O which are relevant for the purpose of this case.

(i) Clause (4) (b) of the said G.O provided that 'if a site is abutting to a road which is *less than 9 meters width*, 4.5 meters from the center line of such road for widening should be left and should be handed over to the Municipality'; and

(ii) Clause (16) (a) of the said G.O. stated that 'if site is affected in the Statutory Plan/Master Plan or Circulation Network or a road required to be widened as per Road Development Plan, such area so affected in the road or circulation network shall be surrendered *free of cost* to the Municipality'.

8. Petitioner contends that as per the said G.O., he should leave only 3 meters on the eastern side which he did; he should leave on the western side 3.50 meters, whereas he left 3.30 meters which is less by a mere 0.20 meters; he should leave 3.50 meters on the northern side, but he left 4.34 meters and 4.15 meters which was more than what necessary; on the southern side, in fact no deviation was pointed out in the proceedings dt.13-07-2016, but he did leave 3 meters as required; and therefore he cannot be said to have made constructions in violation of the sanctioned plan.

9. Petitioner submitted link documents, encumbrance certificate as well as registered mortgage deed to the Municipality apart from making payment of Rs.19,288.70 ps. demanded by it through a demand draft.

10. Petitioner contends that on the eastern side of his property, there is a 9 meter wide road already in existence and there is no necessity for him to leave any portion of his land for future road widening. He also contends that clause (4) of the said G.O. prescribed a requirement of a 9 meter abutting road for applying for construction of residential apartments, which his site already had on the eastern side, and so there was no necessity for him to leave any further area for road widening. He further contended that clause (4) (b) will not apply in his case.

11. He further contends that though clause (16) (a) of the said G.O. has been struck down by this Court in **G.Usha Rani Vs. State of Andhra Pradesh and others**¹ and there is no necessity for him to surrender any land free of cost from his site for future road widening.

12. Since the stop work order, endorsement and show cause notice dt.13-07-2016 were not preceded by any notice and petitioner suffered loss by stoppage of construction mid-way, petitioner filed W.P.No.26989 of 2016 challenging the stop work order, endorsement and show cause notice dt.13-07-2016 issued by the Municipality and

¹ 2015 (4) LAD 35

sought to declare them as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and to set aside the same.

13. On 16-08-2016, the Writ Petition was admitted. In W.P.M.P.No.33411 of 2016 petitioner sought an interim relief to suspend stop work order, endorsement and show cause notice dt.13-07-2016 issued by the Municipality and sought a direction to be permitted to continue the construction. The Court passed the following order:

“Heard Sri P. Venu Gopal, Senior Counsel appearing for petitioner, and Sri Nimmagadda Venkateshwarlu, counsel for respondent nos.2 and 3.

The petitioner has questioned Stop Work Order and Endorsement dt.13.07.2016, apart from a show-cause notice dt.13.07.2016 issued by 2nd respondent.

Admittedly, the 2nd respondent had granted building permit on 11.05.2016 to petitioner.

The counsel for petitioner asserts that encumbrance certificate as well as mortgage affidavit has already been submitted by petitioner. It is also stated that the set-backs as contained in the permit have been adhered to, except on the southern side. He further contends that the demand of 2nd respondent that petitioner should donate 2.17 meters for future road widening is not tenable, and that if the 2nd respondent requires any of petitioner's land for such purpose, it has to acquire the same under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The learned Standing Counsel for 2nd respondent does not dispute the fact that the 2nd respondent should follow the above

statute if it requires any of the land of petitioner for the purpose of road-widening.

Therefore, there shall be interim suspension as prayed for.”

14. Thereafter, W.V.M.P.No.4878 of 2016 was filed to vacate the order.

15. While the said vacate stay application was pending, the Municipality issued proceedings dt.02-12-2016 withdrawing the show cause notice and stop work order dt.13-07-2016 without assigning any reason therefor.

16. Thereafter, a show cause notice dt.01-12-2016 was issued to the petitioner proposing to cancel the construction permission dt.11.5.2016 and asking him to show cause in seven days why action should not be initiated for the said purpose. In the said show cause notice, reliance was placed by the Municipality on Rule 4 (b) and Rule 16 (a) of G.O.Ms.No.168 dt.07-04-2012 and it was alleged that petitioner violated both of them. A reference was made therein to prior application made by his father on 24-12-2013, 13-05-2014, 17-11-2015 as well as endorsements dt.22-01-2014, 30-05-2014 and 18-01-2016 issued by the Municipality apart from an application dt.29-01-2016 of the petitioner and Office Endorsement dt.20-02-2016 of the Municipality.

17. Petitioner submitted explanation on 09-12-2016 seeking supply of the above mentioned documents which were referred to by the Municipality in the show cause notice dt.01-12-2016.

18. However, on 20-02-2017, the Municipality demolished the compound wall and part of the structure erected by the petitioner and also drilled 41 holes in the concrete slabs erected by the petitioner with machines without furnishing the said documents to him.

C.C.No.318 of 2017

19. Petitioner therefore filed on 21-02-2017, C.C.No.318 of 2017 and C.A.No.169 of 2017 therein. So on 21-02-2017, while issuing notice before admission, interim direction was granted in C.A. No.169 of 2017 restraining further demolition but permitting continuation of construction by the petitioner.

20. This was questioned in LPA No.3 of 2017 by the Municipality. Initially on 14-03-2017, the Division Bench suspended the order dt.21-02-2017 in C.A.No.169 of 2017 to the extent the petitioner was permitted to continue the construction, but continued the stay of demolition pending further orders.

21. During the course of hearing of the Letters Patent Appeal, an endorsement dt.24-01-2017 was furnished to the petitioner by the Municipality canceling the plan sanctioned in his favour on 11-05-2016. In this endorsement, there is a reference to a response dt.13-12-2016 sent to the petitioner by the Municipality in response to

his request vide letter dt.09-12-2016 to furnish documents sought by him; but it was stated therein that vide response dt.13-12-2016, some documents were furnished by it to the petitioner. Petitioner was asked to respond in three days why structure constructed by him should not be demolished, and on the ground that there was no reply by him to the show cause notice, the construction permission dt.11.5.2016 granted to him was cancelled.

22. This is assailed by the petitioner in W.P.No.9705 of 2017 filed on 17-03-2017.

W.P.No.9705 of 2017

23. It is the contention of the petitioner in the said Writ Petition that the response dt.13-12-2016 of the Municipality allegedly sent to him was in fact served on Axis Bank and not on him; and that he secured this information from the Post Master Grade-III, Narsaraopet. He also contended that even the endorsement dt.24-01-2017 of the Municipality canceling the Municipal Permission granted to him was not served on him, but was served on one S.Prasad, who resides beside the property of the petitioner, and that this information also was supplied by the Post Master Grade-III, Narsaraopet. He contends that since there is no service on him of both the response dt.13-12-2016 and the endorsement dt.24-01-2017, there has been a gross violation of principles of natural justice.

24. He also contends that there was earlier only return of building applications filed by his father, but there was no rejection of

the same at any point of time; and there was no provision in the online system for application for sanction introduced by the Municipality for mentioning about the fate of earlier applications made for the said purpose, and so he cannot be accused of suppressing the fate of earlier applications for sanction made.

25. Later on 11-04-2017, the L.P.A.No.2 of 2017 was disposed of recording an undertaking from the Advocate General that the structure of the petitioner will not be demolished till 20-04-2017 to enable the respondent to persuade the single Judge to pass appropriate order in the Miscellaneous Petition filed by him in W.P.No.9705 of 2017.

26. However no interim order was passed thereafter in W.P.No.9705 of 2017.

27. Subsequently, the W.P.No.26989 of 2016, C.C.No.318 of 2017 and W.P.No.9705 of 2017 were clubbed together before this Court and arguments were advanced by both sides.

CONTENTIONS OF COUNSEL FOR PETITIONER

28. Sri P.Venugopal, learned Senior Counsel for the petitioner contended as follows:

- (i) The action of the Municipality in canceling the permission for construction granted to the petitioner on 11-05-2016 is contrary to law, arbitrary, *mala fide* and

violates Article 14 and 300-A of the Constitution of India;

- (ii) As per the G.O. Ms.No.168 MA & UD dt.07-04-2012, petitioner should leave only 3 meters on the eastern side which he did; he should leave on the western side 3.50 meters, whereas he left 3.30 meters which is less by a mere 0.20 meters; he should leave 3.50 meters on the northern side, but he left 4.34 meters and 4.15 meters which was more than what necessary; on the southern side in fact no deviation was pointed out in the proceedings dt.13-07-2016, but he did leave 3 meters as required; and therefore he cannot be said to have made constructions in violation of the sanctioned plan;
- (iii) On the eastern side of his property, there is a 9 meter wide road already in existence and there is no necessity for him to leave any portion of his land for future road widening;
- (iv) Clause (4) of the said G.O. prescribed one 9 meter abutting road for applying for construction of residential apartment which his site already had on the eastern side and there was no necessity for him to leave any further area for road widening;

- (v) Clause (4) (b) (which provided that if a site is abutting to a road which is *less than 9 meters width*, 4.5 meters from the center line of such road for widening should be left and handed over to the Municipality), will not apply in his case;
- (vi) Clause (16) (a) of the said G.O. (which stated that if site is affected in the Statutory Plan/Master Plan or Circulation Network or a road required to be widened as per Road Development Plan, such area so affected in the road or circulation network shall be surrendered *free of cost* to the Municipality) has been struck down by this Court in **G.Usha Rani** (1 supra) and there is no necessity for him to surrender any land free of cost from his site for future road widening.
- (vii) The stop work order, endorsement and show cause notice dt.13-07-2016 were not preceded by any notice and thus there has been a gross violation of principles of natural justice;
- (viii) Without seeking permission from this Court, which had granted interim direction to the petitioner on 16-08-2016 in W.P.M.P.No.33411 of 2016, it was not open to the Municipality to withdraw the show cause notice as well as stop work order dt.13-07-2016, and that this was done

with a *mala fide* intention to clandestinely take steps to demolish the structure erected by the petitioner;

- (ix) The documents mentioned in the show cause notice dt.01-12-2016 through petitioner's request letter dt.09-12-2016 were not served on the petitioner at all and the evidence on record shows that they were served on Axis Bank on 16-12-2016 as per delivery sheet furnished by the Post Master Grade-III, Narasaraopet, though the Municipality falsely claimed in the impugned order that it had supplied the said documents to the petitioner vide its letter dt.13-12-2016;
- (x) Petitioner had no knowledge about the proceedings to cancel the permission granted to him on account of non-service of the letter dt.13-12-2016 on him and could not therefore give any explanation within the three days period prescribed therein;
- (xi) Even the impugned endorsement dt.24-01-2017 cancelling the permission granted to the petitioner on 11-05-2016 was served only on one S. Prasad, a neighbour of the petitioner, and not on the petitioner;
- (xii) The said endorsement was furnished to the petitioner only during the pendency of the L.P.A.No.3 of 2017 in March, 2017 as a *fait accompli*;

- (xiii) and much before the said endorsement was served on the petitioner on 20-02-2017, the Municipality along with police demolished southern compound wall, and also made 41 holes in the concrete slabs of the structure with machines high handedly and illegally;
- (xiv) The Municipality violated Section 228 of the A.P. Municipalities Act, 1965 since it did not pass and serve on the petitioner any provisional order under sub-Section (1) thereof permitting the petitioner to show cause within a reasonable time why the provisional order should not be confirmed, and also did not pass or serve final order under sub-Section (2) thereof before taking steps to demolish the structure erected by the petitioner; and
- (xv) This conduct of the Municipality demonstrates its manifest disregard for due process of law which cannot be countenanced.

CONTENTIONS OF ADVOCATE GENERAL FOR RESPONDENTS

29. The learned Advocate General for the respondents contended as under:

- (a) Petitioner suppressed the fact that his father submitted an application on 24-12-2013 for permission to make construction to the Municipality as owner of the property; and that since the existing road is 9.57 mts on

southern side of the plot, the said application was returned by endorsement dt.22-01-2014 requesting him to surrender in favour of the Municipality the road affected area on southern side so to widen upto 9 mts as per Building Rules;

(b) To defeat the said requirement, petitioner's father alienated 1 to 2' width x 114' length of site admeasuring 15.88 sq. mts in favour of his mother Smt.Rama Tarakam through a registered gift deed dt.10-01-2014;

(c) Petitioner's father made application again on 13-05-2014 seeking building permission mentioning southern boundary of the property as belonging to others so as not to leave any road affected area as required by the Building Rules; and therefore the said application was also returned by the Municipality through endorsement dt.30-05-2014 requiring him to submit building plan after leaving road affected area on the southern side of the site, since the existing road is 4.72 mts and it had to be widened upto 9 mts as per the Building Rules;

(d) Thereafter the partition deed was executed on 10-04-2016 allotting 825.33 sq. yds to the petitioner with the petitioner's father retaining 39.74 sq. yds; and then as GPA holder of the petitioner, petitioner's father

made application on 17-11-2015 for construction of stilt, ground+4 upper floors as a residential apartments; that the said application was also returned with an endorsement dt.18-01-2016 observing that the applicant should leave the road affected area on the southern side to make it as 9 mts road, but on the southern side an extent of 39.74 sq. yds was settled to the share of the father to defeat the statutory compliance of leaving road affected area;

(e) That petitioner resubmitted the application on 29-01-2016 which was also returned by endorsement dt.20-02-2016 by observing that there is no clarification regarding the road affected area and that the application was not duly signed by him and structural designs and soil test reports were not submitted;

(f) Petitioner suppressed the fact of there being an existing road on the southern side which requires to be widened as per the Building Rules and made *application dt.19-04-2016 through integrated online Building permission Management System to the Nodal agency* and was then granted tentative building permit order dt.11-05-2016 subject to compliance of conditions 1 to 29 mentioned therein. The final approval would be released only after post-physical verification reports and

documents by Commissioner and the physical verification of the site can be conducted after receipt of notice of commencement of work by the petitioner;

(g) After the introduction of the Integrated Online Building Permission Management System vide G.O.Rt.No.579 dt.07-09-2015 w.e.f. April, 2016, applicants should upload all the required information without suppressing any facts and misrepresentation and that condition (1) thereof envisages revocation of permission at a later stage if it is found that the documents or information submitted or uploaded is false or fabricated;

(h) Condition (15) thereof envisaged that the sanction is accorded on surrendering the road affected portion of the site to the Municipality free of cost without claiming any compensation at any time as per undertaking submitted by the applicant;

(i) Petitioner violated both these conditions and also did not issue notice of commencement of work;

(j) There were deviations in the construction made by petitioner and there was a short fall of 0.5 mts on the southern side and 0.2 mts on western side and the petitioner did not surrender road widening portion to the Municipality though an undertaking was given by his

father on 27-08-2015 for surrendering 53.07 sq. mts towards road affected area and this extent was gifted to petitioner's mother to avoid surrendering it to the Municipality;

(k) Petitioner failed to make an application in writing for approval of the site together with site plan of the land as required under Section 209 of the A.P. Municipalities Act, 1965;

(l) A memo was filed in the High Court regarding withdrawal of the stop-work order and endorsement dt.13-07-2015;

(m) Since the petitioner had misrepresented facts and played fraud, the Municipality was justified in revoking his permission for construction;

(n) The endorsement dt.13-12-2016 along with all documents and the order dt.24-01-2017 cancelling the approval plan were served on the petitioner and the contention of the petitioner that he did not receive the documents sought by him from the Municipality as well as the order canceling the building permission is not correct and that they were sent by Registered Post to him;

- (o) Certificates issued by postal department show that one of the proceedings was served on one S.Prasad as per instructions of the addressee and that the said S.Prasad was residing in H.No.10-5-11 which belongs to petitioner's mother and is adjacent to the petitioner's site;
- (p) Even otherwise petitioner is aware of the documents mentioned in the show cause notice issued by the Municipality on 01-12-2016 as they relate to applications made by petitioner's father, who is also petitioner's G.P.A. and return endorsements issued by the Municipality in that regard and no prejudice was caused thereby to the petitioner;
- (q) The petitioner deliberately did not give a reply to the show cause notice dt.01-12-2016 with ulterior motive; and
- (r) therefore, petitioner is not entitled to any relief.

THE POINTS FOR CONSIDERATION

30. In view of the said contentions, the following questions arise for consideration:

- (a) *Whether the petitioner was bound to transfer to the Municipality land out of his plot for future road widening purpose?*
- (b) *Whether the petitioner was guilty of suppression of facts relating to fate of the earlier applications made by his father and himself,*

warranting revocation of the permission for construction given to him on 11-05-2016?

- (c) Whether there is any deviation in the construction made by the petitioner warranting revocation of the permission for construction and demolition of the structures erected by him?*
- (d) Whether the Municipality's action in revoking the construction permission granted to petitioner on 11-05-2016 by proceedings dt.24-01-2017 is valid and in accordance with law?*
- (e) Whether the Municipality followed the procedure prescribed in the Act for demolishing the structures erected by the petitioner?*
- (f) Whether the petitioner is entitled to any relief in the Writ Petitions? and*
- (g) Whether the respondent-Municipality's officials i.e. the Commissioner and its Town Planning Supervisor, who are respondents in the Contempt Case No.318 of 2017 are liable to be punished?*

31. From the facts narrated above, it is clear that permission for construction granted to the petitioner by the Municipality on 11-05-2016 was cancelled / revoked by the Municipality on 24-01-2017.

32. According to the petitioner, the said order was not served on him at all and copy of the same was given to him during the course of the hearing of L.P.A.No.3 of 2017 filed by him in March, 2017, which L.P.A. was filed by the Municipality questioning the interim order dt.21-02-2017 in C.A.No.169 of 2017 in C.C.No.318 of 2017.

33. Petitioner contends that Municipal officials including the respondents in the Contempt Case on 24-02-2017 came to the site of the petitioner and demolished compound wall of petitioner and

made 41 holes in the slabs laid by him with machines without following the procedure under Section 228 of the Act.

Point (a):

34. I shall first consider the following question:

(a) *Whether the petitioner was bound to transfer to the Municipality land out of his plot for future road widening purpose?*

35. The permission dt.11-05-2016 given to the petitioner mentioned in clause-15 thereof *“this sanction is accorded on surrendering of road affected portion of the site to Narasaraopet Municipality at free of cost without claiming any compensation at any time as per the undertaking submitted”*. This condition has been imposed in the construction permission issued to petitioner on 11.5.2016 by the Municipality in view of clause-16(a) of G.O.Ms.No.168 Municipal Administration and Urban Development (M) Department dt.07-04-2012 which states as follows:

“16(a) Where any land or site or premises for building is affected in the Statutory Plan/Master Plan Road or Circulation network or a road required to be widened as per Road Development Plan, such areas so affected in the road or circulation network shall be surrendered free of cost to the Sanctioning Authority by the owner of the land. No development permission shall be given unless this condition is complied with”

36. This provision has been struck down by this Court in **G.Usha Rani (1 supra)**. After quoting the said provision, this Court held that it is *ultra vires* the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 under which the G.O. Ms.No.168

dt.07-04-2012 has been issued since the Act *only* contemplates acquisition of immovable property under Section 146 thereof (by agreement between the Commissioner of the Corporation and the land owner) or under Section 147 thereof (by way of acquisition of the immovable property as per the provisions of the Land Acquisition Act, 1894 as amended from time to time); and there is no provision in the Act to compel a citizen to give up his property without compensation for future road widening merely because he seeks permission for construction to the Municipal Corporation/Municipality. It held that such compulsory deprivation of property as is contemplated under Rule 16 (a) without paying any compensation violates Article 14 and 300-A of the Constitution of India and amounts to coercing the land owner to part with his property without acquisition; and such a Rule framed in exercise of delegated legislation power, when is in conflict with the parent substantive Act, cannot prevail over the statute. It emphasized the need to balance the interest of the State to provide better living conditions and the right of property of an individual and held that the enforcement of the statute should be done in such a way that a citizen is not deprived of his property save in accordance with law. It followed the decisions of the Supreme Court in **Pt.Chet Ram Vashist Vs. Municipal Corporation of Delhi**² and **Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited and others**³.

² (1995) 1 SCC 47³ (2007) 8 SCC 705

37. No decision taking a different view or over ruling the above view in **G. Usha Rani** (1 supra) is brought to my notice by the learned Advocate General.

38. Once clause 16(a) of G.O.ms.No.168 dt.07-04-2012 has been struck down by this Court, the respondents cannot insist that the petitioner should still comply with it. It would amount to contempt of the order in **G. Usha Rani** (1 supra).

39. Also Rule 4(a) mentions the minimum abutting existing road width required for various uses of building activities. For all residential and commercial buildings with maximum permissible height of 10 mts (Category-A), the minimum abutting existing road width required is 9 mts. The plan sanctioned on 11-05-2016 by the Municipality itself shows that to the east of the plot/property of the petitioner, there is a 9 mts wide road.

40. In the order dt.24.1.2017 passed by the Municipality revoking the permission granted to the petitioner, it is mentioned that petitioner has also not complied with Rule 4(b). Rule 4(b) states:

*“(b) *In case of Sites in Category-A, if a Site is abutting to a road which is less than 9m in width, a building may be permitted with a maximum height of 10m in such sites, after leaving 4.5m from the Centre Line of such road for widening and the same shall be handed over to the Local Body and shall leave the prescribed setback as per Table.III after the said road widening portion. No relaxations are permissible in such cases.”*

41. Clause 4 (b) would apply only if the road abutting the site where permission for construction is sought is less than 9 mts. As

stated above, the plan sanctioned on 11-05-2016 by the Municipality itself shows that to the east of the plot/property of the petitioner, there is a 9 mts wide road. If so, clause 4(b) would not apply to petitioner. There is no requirement of law that there should be another 9 mts road on any other side of his plot (such as the southern side), when there is a 9 mts road on the eastern side and the respondents cannot compel him to provide another 9 mts road on the southern side. Therefore the insistence on the part of the respondents that the petitioner should also provide a 9 mts road on the southern side of his plot is clearly arbitrary, illegal and violates Articles 14, 300-A of the Constitution of India and clause 4(b) itself.

42. The fact that petitioner's father did not accede to the demand of the respondents for surrendering 4.5 mts from the road centre under Rule 4(b) or to leave 9 mts on the southern side under Rule 16(a) cannot be found fault with at all by respondents. They also cannot accuse him of gifting southern portion to his mother to defeat the Rules in G.O.Ms.No.168 dt.7.4.2012. It is right of the citizen to deal with his property as he pleases and no citizen can be blamed for arranging his affairs in a manner not prohibited by law.

43. Thus, the respondents cannot either in the show cause notice dt.01-12-2016 or in the endorsement dt.24-01-2017 seek to rely on either Rule 4(b) or Rule 16(a) in G.O.Ms.No.168 dt.07-04-2012, blame the petitioner for not surrendering 4.5 mts from the road centre under Rule 4(b) or to leave 9 mts on the southern side under Rule

16(a) and revoke the permission granted to petitioner and demolish the structures erected by the petitioner in any manner on that ground. Point (a) is answered accordingly in favour of the petitioner and against the respondents.

Point (b):

44. I shall now consider the following question:

(b) whether the petitioner was guilty of suppression of facts relating to fate of the earlier applications made by his father and himself, warranting revocation of the permission for construction given to him on 11-05-2016?

45. In the show cause notice dt.01-12-2016 issued by the Municipality, there is a reference to earlier application dt.24-12-2013 of the petitioner's father which was returned on 22-01-2014 on the ground that as per Rule 4(b) and 4(c), no road is provided on the southern side of the plot, the major portion of which was subsequently obtained by the petitioner under a registered partition deed executed by his family members including his father on 10-04-2015. Petitioner's father admittedly gave another application on 13-05-2014 asserting that he need not give any land for road widening. He gave another representation stating that on 10-01-2014 some land out of the plot was registered to his mother on the southern side, that there is no access to the plot from the southern side, that there is other land adjacent to the plot which can be used if there is road widening. But this was also returned on 30-05-2014 stating that unless petitioner's

father surrenders land for road widening, application for permission will not be considered.

46. In view of the reasons given above as to why there is no necessity for petitioner or his father to comply with Rule 16(a) and Rule 4(b), the endorsements issued by the Municipality to the petitioner's father insisting on petitioner's father surrendering the land in the plot for future road widening also cannot be sustained and such demand or insistence is violative of Article 14 and 300-A of the Constitution of India apart from being in contempt of the order in **G. Usha Rani** (1 supra).

47. In the show cause notice dt.01-12-2016 issued by the Municipality, there is a reference to petitioner's earlier application dt.17-11-2015 for building permission which was also returned on 18-01-2016 by the Municipality on the ground that there ought to be a 9 mts road on the southern side also and petitioner should surrender land since only 4.72 mts width road is there on the southern side. For the same reason as is applicable to the returned endorsements issued to the petitioner's father, this returned endorsement of the Municipality is also violative of Article 14 and 300-A of the Constitution of India and amounts to contempt of the order in **G. Usha Rani** (1 supra).

48. In the show cause notice dt.01-12-2016, the Municipality referred to another application of the petitioner dt.29-01-2016 and its return on 20-02-2016 on the ground that there was no signature of the

applicant and structural designs and soil test reports were not enclosed to it.

49. Had there been any *rejection* of such prior applications, then it would have been different. Since admittedly the prior applications made by the petitioner's father and by the petitioner were never rejected by the Municipality and were only *returned* by it making an illegal demand for surrendering land for future road widening on the southern side also in spite of there being a 9 mts road on the eastern side, the Municipality cannot accuse the petitioner of any suppression of fact.

50. In any event, it is not the case of the Municipality that in the online application made by petitioner on dt.20-04-2016, there is any provision to disclose fate of earlier applications made by him or his father in regard to the same plot. If such provision is not there in the online web site of Municipality, it is unreasonable on the part of the Municipality to accuse the petitioner of suppression of fate of earlier applications and seek to cancel the construction permission granted on 11-05-2016 to the petitioner.

51. It is also settled law that every non-disclosure of fact cannot be a basis for adverse action unless such fact was material in the sense that had it not been suppressed, it would have had an effect on the merits of the case (**S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar**⁴). In my considered opinion, the non-disclosure of

⁴ (2004) 7 SCC 166 at para-13

fate of earlier applications made by petitioner's father or by petitioner in the online application is not at all material, particularly when there is no rejection of any of such applications and even their return by the Municipality was not legally sustainable.

52. Consequently power under Section 344 of the A.P. Municipalities Act, 1965 revoking permission granted to the petitioner could not have been exercised by the Municipality. Point (b) is answered accordingly against the respondents.

Point (c):

53. I shall now consider the question:

(c) *Whether there is any deviation in the construction made by the petitioner warranting revocation of the permission for construction and demolition of the structures erected by him?*

54. The execution of partition deed among the petitioner, his father and sister \cannot be basis for revoking the permission granted to him.

55. Merely because there is a difference in extent of the plot between the initial applications and the last one which was made online on 20-04-2016, the respondents cannot revoke the construction permission granted to him on 11-05-2016 when the extent mentioned tallies with the share allotted to the petitioner in the partition deed dt.10-04-2015.

56. Petitioner's permission cannot also be cancelled for not issuing notice of construction or not displaying the building plan in a flexi board on the site or for not executing the agreement on stamp paper for giving land free of cost to the Municipality.

57. If the Municipality entertained any doubt about the extent it could have asked the petitioner to clarify it. It could have directed him to erect a flexi board displaying the building plan. It cannot insist on the agreement for giving land free of cost to it in view of the legal position explained above.

58. Admittedly, affidavit for mortgage was submitted initially and registered mortgage deed was also executed on 21-07-2016 in favour of the Municipality as per G.O.Ms.No.168 dt.07-04-2012 and it was sent to the Municipality on 21-07-2016. The Municipality returned it on 25-07-2016 stating that the petitioner should upload it. Petitioner then got it scanned and recorded on a C.D. and sent it by registered post with covering letter on 30-07-2016 which was received by the Municipality.

59. Even if there is a deviation in the construction made from the sanctioned plan to the extent of 0.5 mts on the south, for such a minor deviation, the power to demolish the structure cannot be exercised by the Municipality particularly when it is the admitted case of the parties that on the northern side of the plot of the petitioner, more area than what was required in the sanctioned plan was left by him.

60. In **Kukatpally Municipality vs. P. Satyanarayana**⁵, a Division Bench of this Court expressed a similar view that in all cases of deviation, discretion conferred on Commissioner under Sec.228(3) of the Act to cause the structure erected cannot be exercised. It held:

“ 10. There is another relevant aspect regarding which the Municipal Council did not address itself while disposing of the appeal. Even if the construction had taken unauthorizedly without valid sanction, it does not necessarily merit demolition of the building. We have already referred to the decided cases on the subject. The considerations of equity and public interest should be kept in view in exercising the discretion whether to order demolition or not. This discretion confided to a statutory authority, should be exercised judiciously and reasonably. At this juncture, it is pertinent to take note of in relation to the public road. The Advocate-Commissioner has reported that the distance between the building and the middle of the road is 53 feet on the eastern and western directions and about 50 feet from the balcony (where elevation was being undertaken). Therefore, he pointed out that "most of the buildings on either side of the road are in one line including the building which is sought to be demolished". It is evident from his report that almost all the buildings in the street in question do not comply with the requirement with regard to distance from the public road and the set off to be maintained according to the Zonal Development Regulations. It is also relevant to take note of the fact that the petitioner has given an undertaking that as and when the Zonal Development Regulations are enforced by ensuring that the building on either side of the road maintains a set back of 75 feet from the centre of the road, he would demolish the construction at his cost without claiming any compensation. He also expressed his willingness to pay the compounding fee, if any, levied by the Municipality.”

(emphasis supplied)

⁵ 1990 (2) ALT 202 D.B

61. The learned Advocate General is also not entitled to contend that the petitioner did not make any application under Section 209 of the A.P. Municipalities Act, 1965 seeking site approval for construction of building in his property and this can be the basis for revocation of construction permission. This is a totally new ground now raised for the first time to sustain the illegal action of the Municipality.

62. It was held in **Mohinder Singh Gill v. Chief election Commissioner**⁶ that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. It quoted its earlier decision in **Commissioner of Police v. Gordhandas Bhanji**⁷ where it had held as under:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

⁶ (1978) 1 SCC 405

⁷ AIR 1952 SC 16

63. The Municipality is thus not entitled to urge the said ground to sustain its illegal action. More so because at no point of time did the Municipality asked the petitioner to get such site approval under Section 209 of the Act.

64. Point (c) is accordingly answered holding that the alleged deviation in the construction made by the petitioner did not warrant either revocation of the permission for construction granted to him nor demolition of structure erected by him.

Point (d):

65. I shall now consider the question:

(d) Whether the Municipality's action in revoking the construction permission granted to petitioner on 11-05-2016 by proceedings dt.24-01-2017 is valid and in accordance with law?

66. For the reasons mentioned by me while dealing with points (a), (b) and (c), I hold on point (d) that the show cause notice dt.01-12-2016 as well as the endorsement dt.24-01-2017 cancelling the building permission granted to the petitioner are wholly illegal, arbitrary and violative of Article 14 and 300-A of the Constitution of India.

Point (e):

67. Now I will consider the following question:

(e) Whether the Municipality followed the procedure prescribed in the Act for demolishing the structures erected by the petitioner?

68. It is unfortunate that the Municipality did not choose to serve the documents referred in the show cause notice dt.01-12-2016 on the petitioner since the same was admittedly served on one S.Prasad, a neighbour of the petitioner. When the Municipality sought to rely on certain documents in its show cause notice dt.1.12.2016, it ought to supply them when petitioner wanted copies of those documents. It may be that petitioner's GPA holder is his father who had made the earlier applications which were returned. Nothing prevented the Municipality from furnishing the same since they were in it's custody.

69. Even the endorsement dt.24-01-2017 cancelling the building permission granted to petitioner on 11.5.2016 sent by the Municipality was served on the Axis Bank and not on the petitioner. Copy of the said endorsement was handed over to the counsel for petitioner during the hearing of L.P.A.No.3 of 2017 in March, 2017.

70. There is thus a clear violation of principles of natural justice too by the Municipality before it revoked the permission granted to petitioner and demolished part of the construction made by him, which cannot be countenanced.

71. More importantly before taking any action for demolition of the structures erected by the petitioner, the Municipality was required to serve a provisional order under sub-Section (1) and (2) of Section 228 on the petitioner, invite explanation from the petitioner, and then pass a confirmation order under sub-Section (3) of Section

228. This procedure is mandatory. However, this procedure was admittedly not followed by the Municipality before it demolished some of the structures erected by the petitioner on 20-02-2017.

72. Point (e) is accordingly answered against the respondents and in favour of the petitioner.

Points (f) & (g):-

73. I shall now consider the following questions:

(f) Whether the petitioner is entitled to any relief in the Writ Petitions?

(g) Whether the respondent-Municipality's officials i.e. the Commissioner and its Town Planning Supervisor, who are respondents in the Contempt Case No.318 of 2017 are liable to be punished?

74. Having regard to the findings recorded by me under points (a) to (e), W.P.No.26989 of 2016 and W.P.No.9705 of 2017 are allowed; W.V.M.P.No.4878 of 2016 in W.P.M.P.No.33411 of 2016 in W.P.No.26989 of 2016 is dismissed; the Building Permission dt.11-05-2016 granted by the Narsaraopet Municipality to petitioner is declared to be in subsistence; the endorsement Roc.No.2506/2016/G1 dt.24-01-2017 issued by the Commissioner of the Narsaraopet Municipality canceling the Building Permission dt.11-05-2016 granted to petitioner as well as the consequent demolition of the structures erected by the petitioner are declared as illegal, arbitrary, *mala fide* and violative of Article 14, 300-A of the Constitution of India and the provisions of the A.P. Municipalities Act, 1965; and the said endorsement dt.24-01-2017 is set aside. The respondents shall not

interfere in any manner with the construction being made by the petitioner pursuant to the Municipal permission dt.11.5.2016.

75. As regards the CC, it is pertinent to note that on 16-08-2016 in W.P.M.P.No.33411 of 2016 in W.P.No.26989 of 2016, after hearing counsel for the petitioner and the Standing Counsel for 2nd respondent, this Court had suspended both the stop work order and endorsement dt.13-07-2016 issued by the Municipality and also the Show Cause Notice dt.13-07-2016 issued by it and permitted the petitioner to continue construction pursuant to the permission dt.11-05-2016 issued by it.

76. Though vacate stay application was filed on 01-12-2016 by the respondent in W.V.M.P.No.4878 of 2016, the said order continued to be in force and was not vacated.

77. Merely because the Municipality issued proceedings on 02-12-2016 withdrawing the stop work order and the show cause notice dt.13-07-2016 *suo motu*, and claimed to have filed a memo before this Court, which the petitioner contends was also not served on him, the said W.P.No.26989 of 2016 does not stand dismissed and the interim order dt.16-08-2016 does not vanish into thin air automatically.

78. So the demolition of petitioner's property on 20.2.2017 during the subsistence of the above interim order is a willful disobedience of the said interim order dt.16.8.2016 in

W.P.M.P.No.33411 of 2016 in W.P.No.26989 of 2016, which was admittedly subsisting on 20.2.2017.

79. The blatant violation of Section 228 of the A.P. Municipalities Act, 1965, which is not disputed to be mandatory by the Advocate General, and the Municipality's continuous insistence, without any legal justification, that petitioner should provide land from his site on the southern side too, non-service of documents sought by the petitioner mentioned in the show cause notice dt.01-12-2016 as well as non-service of the endorsement dt.24-01-2017 on the petitioner by the Municipality, and demolition of the structure erected by the petitioner during the subsistence of the interim order dt.16-08-2016 in W.P.M.P.No.33411 of 2016, taken as a whole indicates that it had through out acted in a *mala fide* manner with the sole intention of causing maximum harm to the petitioner.

80. It is settled law that the power conferred on the Court under Article 215 of the Constitution of India to punish contempt of itself necessarily includes all powers incidental and consequential to that power. It is also settled law that on the principle that a contemnor ought not to be permitted to enjoy or keep the fruits of his contempt, the Court is entitled to give appropriate directions for remedying and rectifying things done in violation of its orders. It has also been held in several case that if the offending conduct has caused loss or hardship, this Court will have jurisdiction to direct suitable compensation (monetary or otherwise in the contempt proceedings

itself). (See **Delhi Development Authority v. Skipper Construction Company (P) Ltd.**⁸)

81. In **Chiranji Lal and another v. Ajay Kumar Sood**⁹, where the Supreme Court awarded compensation of Rs.1 lakh to a tenant when he failed to re-construct premises and re-induct tenants in spite of a direction issued by the Supreme Court so that he can be purged out of the Contempt.

82. The Bombay High Court has also taken a similar view in **Nazamunnissa Shaukat Ali and another v. Municipal Corporation of Greater Bombay and others**¹⁰. In that case, the Court held as under :

“In view of the evidence which is before me, I hold that the 1st respondent Municipal Corporation has willfully disobeyed the order of this Court dated 8th November, 1988. the conduct of the 1st respondent is of such a nature that it substantially interferes with the due course of justice. The 1st respondents are, therefore, guilty of contempt of Court. By not complying with the order of the Court the respondents have attempted to render the order passed against them nugatory. This is, therefore, a fit case where the respondents should be first directed to comply with the orders passed against them. If, now, by reason of their own acts of commission and omission, they are not in a position to return the belongings in specie, this is a fit case where they can be directed to pay to the petitioners the money equivalent of the belongings which they have lost. In the circumstances the 1st respondents are directed to pay to the petitioners and others whom they represent a total sum of Rs.10,090 as per Annexure ‘A’ to this judgment and

⁸ 1996 (4) SCC 622

⁹ (1997) 11 SCC 336

¹⁰ 1990 Cri. L. J. 619

order in lieu of belongings which were taken away by the 1st respondents.”

83. Similar view has been taken by this Court also in **T.Ramdas v. Collector & D.M.Hyderabad¹¹**.

84. I am therefore of the view that in addition to imposing punishment for Contempt of Court on respondent no.s 1 and 2 in the CC, they ought to be made liable to tentatively compensate the petitioner for the loss caused to him by each paying Rs.50,000/- to him. The petitioner is given liberty to claim further amounts from them and from the Municipality in a competent civil court.

THE CONCLUSION

85. In this view of the matter, W.P.No.26989 of 2016, W.P.No.9705 of 2017 and C.C.No.318 of 2017 are allowed; W.V.M.P.No.4878 of 2016 in W.P.M.P.No.33411 of 2016 in W.P.No.26989 of 2016 is dismissed; the Building Permission dt.11-05-2016 granted by the Narsaraopet Municipality to petitioner is declared to be subsisting; the endorsement Roc.No.2506/2016/G1 dt.24-01-2017 issued by the Commissioner of the Narsaraopet Municipality canceling the Building Permission dt.11-05-2016 granted to petitioner as well as the consequent demolition of the structures erected by the petitioner are declared as illegal, arbitrary, malafide and violative of Article 14, 300-A of the Constitution of India and the provisions of the A.P. Municipalities Act, 1965; and the said endorsement dt.24-01-2017 is set aside.

¹¹ 1998 A.I.H.C. 553 (AP) (DB)

86. Sri A.Bhanu Pratap, the Commissioner of the Narsaraopet Municipality (1st respondent in the CC.No.318 of 2017) and Sri T.Sambiah, the Town Planning Supervisor of the said Municipality (the 2nd respondent in the said C.C.) are both held guilty of willful disobedience of the order dt.16-08-2016 in W.P.M.P.No.33411 of 2016 in W.P.No.26989 of 2016 and sentenced to suffer two months' simple imprisonment and fine of Rs.2,000/- (Rupees Two Thousand only) each; the sentence of imprisonment imposed on them is suspended for a period of six weeks; the petitioner shall deposit subsistence allowance at the rate of Rs.300/- per day for each of the contemnors; they shall each pay Rs.50,000/- (Rupees Fifty Thousand only) as tentative damages for the loss caused to the petitioner by their illegal actions referred to above; there shall be an entry in their confidential reports by the competent authority of the State of Andhra Pradesh of their above illegal conduct and the finding recorded by this Court in that regard; and the Principal Secretary, Municipal Administration, State of Andhra Pradesh shall initiate disciplinary action against both the above officials for their highhanded, arbitrary and *mala fide* action against the petitioner under the applicable service rules.

87. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29.03.2018

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