

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.13923 of 2009

Order:

This Writ Petition is filed seeking to declare the action of the respondent – Municipality in interfering with the construction of the building by the petitioners in Door No.4-2-107, KNF, Main Road, Pithapuram, East Godavari district, as illegal and arbitrary.

The facts of the case, according to the petitioners, are that they have purchased an open plot admeasuring 82.66 sq. yards, situated at Door No.4-2-107, KNF, Main Road, Pithapuram, East Godavari district, under a registered sale deed dated 09.07.2008; they made an application to the respondent – Municipality seeking permission for construction of ground plus first floor; the respondent, accordingly, granted permission on 09.01.2009; when the construction was going on, the respondent issued a provisional notice on 09.04.2009 under Section 217(1) of the A.P. Municipalities Act alleging that the construction was being done contrary to the sanctioned plan; the petitioners gave a detailed reply to the said notice on 17.04.2009 stating that there are no deviations from the sanctioned plan; when the respondent, without passing any order, is threatening to stop the construction of the building, the petitioners filed the present writ petition.

This Court, while admitting the Writ Petition on 14.07.2009, directed the respondent not to interfere with the construction of the building in question of the petitioners without following due process of law.

Counter affidavit has been filed by the respondent stating that the petitioners have violated the sanctioned plan; the Municipality filed a case

in STC No.189 of 2009 before the Judicial Magistrate of II Class, Pithapuram, under Section 340 read with 217, 209, 210, 211 and 221 of the A.P. Municipalities Act, 1965; the petitioners admitted the said offence and they were convicted and fine was imposed and the fine amount was paid by them; the petitioners encroached upon the road margin without leaving any space.

A reply affidavit has been filed by the petitioners stating that they have not committed any violation/deviation on the front and rear side of the building and on the western side Kuchivari Veedhi, the set back of 0.50 meter was left by them.

Heard Sri P. Govind Reddy, learned counsel for the petitioners, and Sri Venkateswarlu Nimmagadda, learned Standing Counsel for the respondent – Municipality.

The impugned notice dated 09.04.2009, issued under Section 217(1) of the A.P. Municipalities Act, 1965, does not specify the deviations which are made by the petitioners. It merely says that the building is constructed contrary to the building plan. As the impugned notice issued by the respondent – Municipality is bereft of any details, the respondent – Municipality is directed to inspect the building in the presence of the petitioners and, if any deviation is noticed, issue fresh notice to the petitioners and after receipt of the explanation from them, shall take appropriate action in accordance with law. The entire exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Till such time, no coercive steps shall be taken by the respondent – Municipality for demolition of the deviated portion of the building.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

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KONGARA VIJAYA LAKSHMI, J.

Date: 22.10.2018

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