

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

W.P.No.36354 of 2018

ORDER:

Heard the learned counsel for the petitioner and Sri N.Praaveen Kumar, learned Standing Counsel for the third respondent and the learned Government Pleader for respondents 1 and 3.

2. A notice bearing R.C.No.TPS/2018, dated 26.09.2018, issued by the Commissioner, Madira Municipality, is under challenge in the present writ petition.

3. Earlier, alleging that without recourse to law the respondent authorities were attempting to demolish the subject construction, petitioner herein filed W.P.No.32067 of 2016 and this Court in WPMP.No.39654 of 2016, on 06.09.2016, passed the interim order, directing the respondents not to demolish the house of the petitioner built over 454 sq. yards located at 4-78, Kalamandir Road, Madira, Khammam District, except in accordance with law. Thereafter, according to the petitioner, she filed W.P.No.31745 of 2017 for a direction to the respondents to provide amenities. According to the learned counsel, both the writ petitions are pending now.

4. Now, by way of the impugned notice bearing R.C.No.TPS/2018. dated 26.09.2018, the Commissioner, Madira Municipality/second respondent herein, directed the petitioner herein to remove the alleged encroachments on the roads, drainages, ponds and lakes while threatening with coercive action if the petitioner fails to do so. According to the learned counsel for the petitioner, the impugned notice dated 26.09.2018 is highly arbitrary and illegal and violative of Articles 14 and 300-A of the Constitution of India.

5. On the other hand, it is submitted by the learned Standing Counsel that there is no illegality in the impugned action, as such, the impugned action is not amenable for any judicial under Article 226 of the Constitution of India.

6. A perusal of the notice impugned in the present writ petition clearly and in vivid terms discloses that the second respondent did not indicate the particulars of the alleged encroachments said to have been made by the petitioner herein and the same is in the nature of general notice. Such a course of action adopted by the second respondent in issuing the notice without indicating the alleged encroachments cannot be sustained in the eye of law. The impugned notice also does not disclose anything with regard to the show-cause notice. In the considered opinion of this Court, the said action on the part of the second respondent is violative of the principles of natural justice. On the said ground alone, the impugned notice is liable to be set aside.

7. Accordingly, the writ petition is allowed, setting aside the notice bearing R.C.No.TPS/2018, dated 26.09.2018, issued by the Commissioner, Madira Municipality/second respondent herein. However, this order will not preclude the respondent Municipality from issuing the notice, indicating the particulars of the alleged encroachments, if any, and to proceed further, after giving opportunity to the petitioner herein. 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:05.10.2018
grk

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



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Dated 05.10.2018

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