

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

SUO MOTU CONTEMPT CASE No.2281 of 2017

ORDER:

This Court issued *suo motu* notice to the respondent to show cause why proceedings of Contempt of Court shall not be initiated against him for *prima facie* committing contempt of the order dt.04-02-2016 in W.P.No.3280 of 2016 by passing the order dt.09-03-2017 regularizing the illegal construction made by respondent Nos.4 and 5 in the said Writ Petition without considering the objections filed on 18-01-2016 and their subsequent representations as directed therein.

2. The petitioners in W.P.No.3280 of 2016 had filed the said Writ Petition challenging the inaction of (i) the State of Andhra Pradesh represented by its Principal Secretary, Municipal Administration and Urban Development Department, (ii) the Commissioner, A.P. Capital region Development Authority (the respondent in the *Suo Motu* Contempt Case) as well as (iii) the Prasadampadu Gram Panchayat in taking action against the illegal and unauthorized construction of 3rd and 4th floor in Sai Sowdha Apartments, opposite to Vikas School, near Muralinagar, Pasadampadu, Vijayawada, as illegal, arbitrary, unjust and contrary to Article 14 of the Constitution of India and to direct the State of Andhra Pradesh and respondent not to regularize the same after considering their representations dt.18-01-2016.

3. Their grievance was that they purchased Flats in the above complex in 2012, that as per the sanctioned plan, the respondents 4 and 5 therein were permitted to build 2 flats in the Ground floor and 4 flats each in First and 2nd floors only, but they built two 3 bed room flats in 3rd floor and a pent house in 4th floor in violation of sanction plan ignoring their objections.

4. The said Writ Petition was disposed of on 04-02-2016 by this Court directing the respondent to make an earnest consideration of the objections filed by petitioners before taking a decision on the application filed by respondent Nos.4 and 5 in the said Writ Petition for regularization of the alleged illegal constructions. It also directed that if need be, the respondent shall afford an opportunity of personal hearing to the petitioners as well as respondent Nos.4 and 5 therein.

5. Thereafter proceedings were issued on 09-03-2017 by the respondent herein regularizing the said construction in the name of one Panchakarla Nagamani. The said order made no reference to the objections filed by petitioners in W.P.No.3280 of 2016 and does not contain any decision rejecting the same.

6. Assailing the same, the petitioners in W.P.No.3280 of 2016 filed W.P.No.35840 of 2017.

7. They contend in the said Writ Petition that the respondent issued the impugned proceedings without considering the directions given by this Court in its order dt.04-02-2016 in W.P.No.3280 of 2016 and

regularized the 3rd floor constructed by respondent Nos.4 and 5 including Panchakarla Nagamani. They contend that the action of respondent in not considering their objections dt.18-01-2016 and also not affording any opportunity to them is an arbitrary exercise of power on the part of respondent and the order regularizing the unauthorized construction passed by respondent on 09-03-2017 is liable to be set aside since it was passed ignoring the orders passed by this Court.

8. They also pointed out that they had issued legal notice on 15-11-2016 through Registered Post With Acknowledgment Due informing the respondent and the Prasadampadu Gram Panchayat about the order dt.04-02-2016 in W.P.No.3280 of 2016 and vehemently objected to regularizing 3rd and 4th floor illegally constructed by respondent Nos.4 and 5 in the Writ Petition in violation of the approved plan, and sought action to be taken against them and against respondent Nos.4 and 5 by removing the 3rd and 4th floors in Sri Sowdha Apartments within one week.

9. They contended that the said notice was served on the respondent and Prasadampadu Gram Panchayat; that respondent issued a notice dt.14-12-2016 to the petitioners asking them to appear before the Director (DC) of APCRDA at 11 a.m. on 17-12-2016 and explain their contentions; that the petitioners in W.P.No.35840 of 2017 went to the office; but there was no personal hearing conducted; petitioners therefore submitted a letter dt.17-12-2016 requesting the

respondent not to regularize the 3rd and 4th floor, but in spite of the same, he passed the order on 09-03-2017 regularizing the 3rd floor of the illegal construction.

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10. After hearing the contentions of the counsel for petitioners in W.P.No.35840 of 2017, this Court passed the following order on 27-10-2017 in W.P.M.P.No.44542 of 2017:

“Learned Government Pleader for Municipal Administration takes notice for 1st respondent. Sri D.Ramesh, learned counsel, takes notice for 2nd respondent. Sri G.Seshadri, learned counsel, takes notice for 3rd respondent.

Issue notice to respondent Nos.4 to 6.

Prima facie the impugned order passed by 2nd respondent regularizing the illegal construction made by respondent Nos.4 to 6 is passed without considering the objections dt.18-01-2016 of the petitioners and subsequent representations. Thus, the 2nd respondent has prima facie committed contempt of the order dt.04-02-2016 in W.P.No.3280 of 2016.

Therefore, the Registry to issue show cause notice to 2nd respondent to show cause why proceedings of Contempt of Court shall not be initiated against him for willful disobedience of the order dt.04-02-2016 in W.P.No.3280 of 2016.”

11. On 25-01-2018, Sri D.Ramesh, learned counsel for respondent entered appearance and sought two weeks time to file a counter in this *Suo Motu* Contempt Case. No counter-affidavit was filed in W.P.No.35840 of 2017.

12. The matter was then listed on 09-02-2018 and a direction was given to list after two weeks along with W.P.No.35840 of 2017.

13. Counter-affidavit dt.06-02-2018 was filed by respondent in this *Suo Motu* Contempt Case.

THE STAND OF THE RESPONDENT

14. In the said counter-affidavit, it was stated that the petitioners in W.P.No.35840 of 2017 as well as respondent Nos.4 to 6 therein were informed through a communication dt.15-12-2016 to attend personal hearing on 17-12-2016; that on 17-12-2016 and 07-01-2017 both petitioners and respondent Nos.4 and 5 therein attended the personal hearing at the office; their pleas were heard; and it was observed that major issue of the complaint is denial of usage of lift and terrace to other flat owners of the Apartment. After referring to explanation of respondent Nos.4 and 5 in W.P.No.35840 of 2017, it is stated in the counter that the respondent herein had instructed respondent Nos.4 and 5 in the said Writ Petition to submit all ownership documents pertaining to the building, Court order and sanctioned plan of the Gram Panchayat , BPS proceedings along with plans and other BPS applications; that these were furnished by the owner/builder to his office on 21-01-2017; that he then assessed the documents submitted by both parties; and having observed that BPS applications made by respondent Nos.4 and 5 were according to the guidelines issued vide G.O.Ms.No.128 dt.22-05-2015 and after taking into consideration the objections raised by petitioners, approved the same.

15. He stated that there are two types of online BPS proceedings i.e. (1) Approved, and (2) Rejected, and online proceedings do not reflect the objections or reasons. It is stated that the respondent is following the online procedure in respect of BPS applications.

16. He denied that he has violated the orders passed by this Court, and stated that he did not commit any contempt as alleged by petitioners. He also tendered unconditional apology, if the Court were to come to the conclusion that he committed contempt.

17. Not satisfied with the stand in the counter-affidavit, notice in Form-I was issued to respondent on 23-02-2018 and the matter was directed to be listed on 23-03-2018 along with W.P.No.35840 of 2017.

18. The matter next appeared before this Court on 15-06-2018.

19. On that day, I.A.No.1 of 2018 was filed by respondent to dispense with his presence. It was ordered and he was directed to appear on 22-06-2018 and learned counsel for respondent was directed to inform the said fact to the respondent.

20. On 22-6-2018, arguments of the learned counsel for respondent were heard and orders were reserved.

21. Learned counsel for respondent reiterated the stand in the counter-affidavit that the respondent had considered the objections filed by petitioners on 08-01-2016 and complied with the order

dt.04-02-2016 in W.P.No.3280 of 2016 and that respondent has not committed any contempt of the order dt.04-02-2016 in W.P.No.3280 of 2016.

THE CONSIDERATION BY THE COURT

22. In the order dt.04-02-2016 in W.P.No.3280 of 2016, this Court noted that petitioners therein being owners of two flats in the apartment are understandably agitating against the illegal constructions allegedly made by respondent Nos.4 and 5 therein as their interests are seriously prejudiced by such construction and therefore the respondent should consider the plight of the petitioners and the day-to-day hardships they may face if the alleged illegal constructions made by respondent Nos.4 and 5 are regularized; and in this view of the matter, the respondent was directed to make an earnest consideration of the objections filed by petitioners before taking a decision on the applications said to have been filed by respondent Nos.4 and 5 for regularizing the alleged illegal construction. It had observed that if need be, the respondent shall afford an opportunity of personal hearing to the petitioners as well as respondent Nos.4 and 5.

23. This being the direction in the said Writ Petition, it was incumbent on the part of respondent to pass an order recording the objections of the petitioners in their representation dt.08-01-2016, and then record reasons why the objections raised by petitioners are not valid and sustainable if they are to be rejected and then proceed to

regularize the illegal constructions made by respondent Nos.4 and 5. There is no such exercise done by respondent at all as can be seen from the order dt.09-03-2017 passed by him.

24. In **S.N.Mukherjee v. Union of India**¹, a Constitution Bench of the Supreme Court held that some of the considerations why the courts insist on the requirement of recording reasons are that it would guarantee consideration by the authority, introduce clarity in the decisions and minimize chances of arbitrariness in decision-making apart from enabling the judicial review courts to effectively exercise the appellate or supervisory power. The Court held that except in cases where the requirement of giving reasons has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial function is required to record the reasons for its decision.

25. This legal position is not disputed by the counsel for the respondent. But, no explanation is offered why a reasoned order is not passed by the respondent indicating application of mind to the objections raised by the petitioners in the WP.No.35840 of 2017 to the application seeking regularization of the illegal construction made by respondent nos.4 and 5 therein.

26. The excuse given by respondent that there was online Building Penalization Scheme and it does not reflect the objections or reasons, is not tenable because nothing prevented the respondent from passing

¹ AIR 1990 SC 1984

the order offline in the light of the direction given by this Court on 04-02-2016 in W.P.No.3280 of 2016 and he cannot ignore the said direction on the said pretext. Infact copy of the alleged online BPS scheme is also not placed before this Court by the respondent.

27. Even in the counter-affidavit, the respondent has not chosen to state what exactly was the issue raised in the objections filed by petitioners and why such objection is not a tenable objection. He also has not stated the reasons why he regularized the illegal construction of the 3rd floor made by respondent Nos.4 and 5 in W.P.No.35840 of 2017.

28. I am therefore of the opinion that there is a willful and deliberate violation of the orders passed by this Court.

29. I further hold that the apology given by respondent lacks contrition and is a mechanical one after giving vague explanation to justify his violation of the order passed by this Court.

30. Accordingly, I find that the respondent is guilty of committing Contempt of Court and is liable to be punished for the same.

31. Consequently, this *Suo Motu* Contempt Case is allowed and the respondent is sentenced to pay fine of Rs.2,000/- (Rupees Two Thousand only), which shall be remitted within four (04) weeks from today. In default thereof, the respondent shall suffer Simple Imprisonment for a period of four (04) weeks.

32. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-07-2018
Vsv

