

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 19525 of 2019

O R D E R:

Notice dated 27.07.2019 issued by the 2nd respondent Corporation, whereunder the petitioner was directed to show cause, in writing, within 15 days as to why building permission dated 28.02.2019 obtained by him in respect of plot area of 200 square yards in Survey No. 23 of Gopalpur Revenue Village, by misrepresentation of facts of survey number and boundary dispute, should not be revoked, is under challenge in this Writ Petition.

The case of the petitioner is that based on the complaint alleged to have been made by the 3rd respondent on 09.05.2019, the respondent Corporation appeared to have obtained the survey report and issued the present show cause notice alleging that he had occupied the land to an extent of 278 square yards in Survey No. 24 Part and thereby proposing to cancel the permission granted in his favour on the ground that he had misrepresented the facts of survey number and boundary dispute. It is the assertion of the petitioner that he was never put on notice with respect to either the complaint made by the 3rd respondent or survey that is proposed to be conducted by the Assistant Director of Survey and Land Records and hence, issuance of the impugned show cause notice is illegal, hence, he is not required to respond to the same. The petitioner contends that O.S. No. 162 of 2019 on the file of the Principal Junior Civil Judge's Court at Warangal was filed against the 3rd respondent and the said suit is pending.

Learned counsel for the petitioner submits that the respondent authorities are incompetent to decide the boundary disputes between the petitioner and the 3rd respondent and in those circumstances, the Corporation ought to have directed the 3rd respondent to approach the civil Court for settlement of the said dispute.

On the other hand, Smt. Pingali Lakshmi, learned Standing Counsel for the Corporation submits that when a complaint is received, the Corporation having found *prima facie* material, on verification of the documents placed before it, to the extent that the matter requires consideration, had rightly sought assistance of the Survey Department and based on the report, show cause notice came to be issued. She also submits that since the show cause notice was issued, the petitioner has ample opportunity to submit his explanation and also to establish that there was no encroachment into the neighbor's land, as alleged. According to her, the Corporation is not a party to the suit, but however, when a complaint is received, it is the primary duty of the Corporation to consider the same.

At the outset, it is to be noted that the Writ Petition need not be entertained as the impugned notice is only a show cause notice and finding is yet to be given by the Corporation either to cancel or not the permission granted in favour of the petitioner and also as to the fact whether the petitioner suppressed the material facts and pendency of boundary dispute. Apart from that, the Corporation cannot entertain the boundary disputes between the parties. In the case on hand, there is no dispute that the extent of property claimed by the petitioner as well as the respondents is

very small. The allegation in the complaint is that the petitioner had encroached into a portion of the 3rd respondent property. Though the petitioner might have obtained permission with respect to 200 square yards owned by him, but in practice, if the petitioner is encroaching on to the neighbor's property, the same is verifiable by the Corporation. However, the Corporation did not straight away take action on the petitioner. Before initiating action, it had made an attempt to verify the allegations made by the 3rd respondent. In other words, a rational approach has been adopted. Though learned counsel for the petitioner asserts that it is for the unofficial respondent to approach the civil Court, it is not necessary for this Court to drive each and every small issue to be resolved in the civil Court.

In the present set of facts, when the allegation is with respect to encroachment of small extent of land, which is verifiable fact from the municipal Corporation, and when the Corporation does not have objection for such verification being made, the objection which the petitioner raises does not require to be considered. It may also be noted that while making construction, the petitioner, even according to the sanctioned plan, is required to maintain certain setbacks. If the allegation of the respondent Corporation were to be true that there is an encroachment which can be detected with minimum inspection with respect to the boundaries mentioned in the sanctioned plan, verification is required to be made. Inasmuch as the learned Standing Counsel for the respondent Corporation is uncertain as to whether notice was issued to the petitioner before conducting survey, it would be appropriate if a *de novo* survey is ordered after issuing both the

petitioner as well as the 3rd respondent notice with respect to identification / demarcation of the respective areas.

In those circumstances, the Writ Petition is disposed of giving liberty to the petitioner to submit his explanation. Thereafter, if the 2nd respondent Commissioner finds it necessary that re-verification is to be done by the surveyor, fresh survey may be asked to be conducted after giving notice to both the parties and the decision taken thereon be communicated to the petitioner. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

17th September 2019

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CHALLA KODANDA RAM, J

