

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.22121 of 2019

ORDER:

The petitioner challenges the Confirmation Order, dated 23.09.2019, issued under Section 228(3) and 360 of the Andhra Pradesh Municipality Act, 1965. One of the grounds of challenge is the Provisional Order/Notice dated 16.09.2019 served on the petitioner giving a time of seven days for submitting explanation. Even before the petitioner could file explanation on 23.09.2019, an order came to be passed thereby depriving the opportunity of filing explanation. Yet another instance which the petitioner points out is that in the Notice dated 16.09.2019 issued under Section 228(1)(2) of the Act, there is no mention with regard to the petitioner alleged encroaching of the road.

Learned counsel for the petitioner points out that the Notice dated 16.09.2019 was in fact not addressed to the petitioner, but issued in the name of one Vanishetty Ramchander, who has nothing to do with the property.

On the other hand, learned Standing Counsel, on instructions, submits that a complaint was received that the petitioner encroached the road portion which portion was in fact acquired by the State for the purpose of road widening. On receiving the complaint, the respondent authorities inspected the place and found that the petitioner made construction by encroaching into the road portion and thus the Notice dated 16.09.2019 came to be issued, and thus prays for the dismissal of the writ petition.

Having regard to the respective submissions, there being no denial that the Show Cause Notice had been replied on 18.09.2019, and as the respondents themselves chose to grant seven days time, even before the

expiry of seven days, the impugned order has been made and therefore, the impugned order cannot be sustained and is accordingly set aside.

However, the allegation of the petitioner that no specific mention was made in the earlier Show Cause notice dated 16.09.2019, cannot be justified as it was clearly mentioned that a complaint was received from one K. Yadagiri, V. Vinay and 20 others who are residents of Koligada street that the petitioner has encroached the road portion leading to LIC Office, Medak. The petitioner is aware of the very notice and in the said notice it has already been mentioned in the first paragraph that a complaint is received about road encroachment though the same was not separately mentioned once again under the Caption "Details of the unauthorized construction".

In that view of the matter, the objection raised by the petitioner that no mention was made in the earlier Show Cause notice, is not sustainable. However, considering that the petitioner has not submitted his explanation, and in the meantime the impugned order came to be passed, ten (10) days time is granted from today to the petitioner to submit his explanation to the Notice dated 16.09.2019, and the 2nd respondent-Commissioner shall pass orders, in accordance with law, after considering the explanation that may be submitted by the petitioner. If necessary, the 2nd respondent shall get the subject premises inspected for setting out the precise encroachment allegedly being made by the petitioner. The 2nd respondent shall ensure that no road portion is encroached interfering with the free flow of traffic.

Subject to the above, the writ petition is disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

01st October, 2019
KSM

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