

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Writ Petition No.3524 of 2023****ORDER:**

This Writ Petition for mandamus is filed to declare the action of the 2nd respondent in issuing the impugned final notice, dated 02.02.2023, for removal of the constructions in the disputed property within seven days without giving any prior opportunity to the petitioner to be heard, as illegal and consequently, prayed to set aside the impugned notice and direct the respondents not to interfere with the possession of the petitioner in respect of the said property.

2) Heard learned counsel for the petitioner; learned Assistant Government Pleader for Municipal Administration and Urban Development appearing for the 1st respondent; Sri M.Manohar Reddy, learned Standing Counsel for Municipalities, appearing for the 2nd respondent; and learned Assistant Government Pleader for Revenue appearing for the 3rd respondent.

3) As per the case pleaded by the petitioner, a house site patta was allotted to the petitioner assigning two cents of vacant site long back in the year 1987 by the then Mandal Revenue Officer, Addanki and that, thereafter, after obtaining necessary permission

from the Gram Panchayat, to construct a house that the petitioner has constructed the house and has been residing in it. Whileso, earlier when some third party filed W.P.No.35463 of 2018 against the petitioner and others alleging that the petitioner and others made illegal constructions, this Court, by order dated 05.12.2022 after hearing both the parties therein, disposed of the said Writ Petition with a direction to the respondents 5 and 7 therein to take steps as per law against the constructions made by the respondents 8 to 12 therein i.e. the petitioner herein and others, if the constructions are found to be unauthorized constructions.

4) Thereafter, the impugned final notice was issued for demolition of the said structures.

5) The main grievance of the writ petitioner in challenging the impugned final notice is that even though this Court has earlier ordered to ascertain whether the construction is unauthorized or not and then to take steps as per law, no enquiry was made to ascertain whether it is an unauthorized construction or not and no show-cause notice was issued to the petitioner to explain the same and straightaway the final notice, which is impugned in this Writ Petition, was given to the petitioner. Therefore, feeling

aggrieved by the same, the instant Writ Petition has been filed by the petitioner.

6) This Court finds considerable force in the said contention of the petitioner. This Court in W.P.No.35463 of 2018 ordered only to take steps as per law if the construction are found to be unauthorized constructions. Therefore, necessary enquiry is to be made to ascertain whether the construction in question is an unauthorized construction or not. However, without making any such enquiry and without deciding whether the said construction is an unauthorized construction, after calling for explanation from the petitioner, after issuing show-cause notice to the petitioner, the impugned final notice was straightaway given to the petitioner under Section 192 of the A.P. Municipalities Act, 1965 and under other provisions. Section 192 of the A.P.Municipalities Act clearly mandates that a show-cause notice has to be given to the petitioner calling for the explanation and then decide whether the construction is unauthorized construction or not. Further, as per the submission made by the learned Standing Counsel for the 2nd respondent Municipality, an enquiry is to be made regarding the extent of the land in possession of the petitioner and on which the petitioner made the construction. According to him, only two cents of land was allotted to the petitioner as per the patta that

was produced and it is to be ascertained whether the petitioner has made construction in excess of the said extent of the land or not. So, he would submit that even the 3rd respondent Tahsidlar, Addanki Mandal, has to make an enquiry whether any encroachment was made on to the road margin or not by the petitioner and also regarding genuineness of the Patta that was produced by the petitioner.

7) Therefore, in the said facts and circumstances of the case, the Writ Petition is disposed of with a direction to the petitioner to treat the impugned final notice, dated 02.02.2023, as a show-cause notice issued to the petitioner and submit the explanation of the petitioner to it within two weeks from the date of receipt of a copy of this order along with the documents in support of the claim of the petitioner. After submitting the said explanation and the documents by the petitioner, the 2nd respondent shall consider the said explanation and make necessary enquiry in this regard and then pass appropriate orders according to law within four weeks from the date of submission of the said explanation. The 3rd respondent Tahsildar is also directed to ascertain the genuineness of the house site patta that was produced by the petitioner and both the respondents 2 and 3 shall ascertain whether the construction of the petitioner is made within the said

extent of two cents that was allotted to the petitioner as per the case pleaded by the petitioner or whether the petitioner has made construction in excess of the said land or not. If it is found that the construction made is unauthorized and even if it is found that the construction was made beyond the extent of land allotted to the petitioner, then appropriate steps according to law shall be taken by following due process of law by the respondents. Till the said exercise is completed, as directed supra, the respondents shall not make any effort to demolish the house, shop rooms and the structures in question. No costs.

Sri M.Manohar Reddy, learned Standing Counsel for 2nd respondent Municipality, is directed to inform the authorities of the 2nd respondent Municipality regarding the order passed by this Court, by 5.00 p.m. today.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:13.02.2023.

Note:
Issue C.C. by 15.02.2023.
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