

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.2610 of 2018

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration for respondent No.1, Sri D.Ramesh learned Standing Counsel, for respondent No.2-CRDA and also learned Standing Counsel for the 3rd respondent-Gram Panchayat and perused the prayer in the writ petition with the supporting affidavit and other material on record including the additional material filed by the petitioner with memo of the proceedings dated 27.01.2018 of AP CRDA in Roc.No.1333/2015 dated 27.01.2018 and perused also written instructions of the learned Standing Counsel for the 2nd respondent adopted by the 3rd respondent.

The prayer in the writ petition reads as follows:

“.....to issue an order, writ or direction, more particularly one in the nature of Writ of Mandamus declaring the actions of the 2nd and 3rd respondents in trying to demolish, the convention center building i.e., Yarlagadda Grandeur, raised by the petitioner in Dr.No.11-2, R.S.No.227/3 in Kanuru village, Penamaluru Mandal, Krishna District, even after obtaining the Occupancy Certificate and the approved Building Penalization Scheme viz., BPS/KRI/PEN/KAN/7856415 dated 22.03.2017 as being illegal, arbitrary and unconstitutional and in violative of Principles of Natural Justice and violative of Articles 14, 21 and 300-A of the Constitution of India and consequentially direct the respondents Nos.2 and 3 not to demolish the building raised by the petitioner in Dr.No.11-2, R.S.No.227/3 in Kanuru village, Penamaluru Mandal, Krishna District, and to pass such other order or orders.....”

The affidavit supporting averments are that the respondent Nos.2 & 3 are trying to demolish unauthorizedly the convention center building with name and style as Yarlagadda Grandeur of petitioner bearing door No.11-2, R.S.No.227/3 in Kanuru Village, Penamuluru Mandal, Krishna District, even petitioner obtained occupancy certificate and the same is covered by approved building penalization scheme (BPS) vide application No.BPS/KRI/PEN/KAN/7856415 dated 22.03.2017 and their action is illegal. It is the submission that in the land owned by him of an extent of Ac.0.70 cents in demarcation No.227/3 of Kanuru Village supra covered by registered sale deeds in his favour dated 24.04.2006 way back in 2014, he constructed convention centre building and he is possession and enjoyment and the same is assessed to tax and he applied under the BPS on 28.12.2015 by payment of Rs.10,000/- fees with the application and the officers of respondent Nos.2 & 3 inspected and approved the same by regularization of the deviation in the plan vide approved proceedings supra dated 22.03.2017 and under the instance of the political opponent to the petitioner they are trying to demolish unauthorizedly by taking the law into their hands, thereby with no other option constrained to file writ petition in seeking the prayer supra.

The additional material filed by the proceedings dated 27.01.2018 of the 2nd respondent which reads he has submitted BPS application through LTP of one B.Raghunad online and the authority tentatively regularized the BPS application based on indemnity Bond II submitted by him subject to condition of no field inspection done by the authority and the proceedings

issued purely based on the information furnished by the applicant and any further discovery of any wrong information, the applicant is liable for penal action besides rendering the proceedings as void and further all proceedings and action of enforcement being initiated as contemplated against said building are withdrawn for the time being thereby and the notice further reads that pursuant to the tentative permission and withdrawal on earlier demolition notice on inspection, it is came to know that there are suppression of material facts by the petitioner in the online BPS application submitted supra in the tentative proceedings viz., as per Rule 1(2) and G.O.Ms.No.128 dated 22.05.2015 the scheme applies to buildings constructed after 01.01.1985 and before 31.12.2014 and from the google map extracts of 2014 & 2015, it is observed that a shed was existed before 31.12.2014 later the petitioner constructed two sheds in the year 2015 and applied for regularization for function hall under BPS with latest photos on 28.12.2015 and the existing building is also with the deviation to the plan regularized under BPS plan as detailed therein and further the construction of additional ACC roof sheet shed to the regularized function hall and is used as store room is also against rule 10 of G.O.Ms.No.128 supra and he has not submitted the NOC obtained from AP Fire and Emergency Services Department though criteria for the function hall as per rule 4(1)(a) of said G.O.Ms.No.128 and thereby he was asked to show cause under Section 113 of APCRDA Act, 2014 as to why the BPS proceedings supra dated 22.03.2017 shall not be revoked and further action shall not be initiated under Section 115 of the

Act. It is therefrom the writ petition is filed on 29.01.2018 with reference to the averments supra. The written instructions of the 2nd respondent adopted by the 3rd respondent is in reiterating the same of deviation contrary to it.

A perusal of the writ petition no way shows any explanatory facts to the said impugned show cause notice dated 27.01.2018. It is the core of the contention of the learned counsel for the respondents supra that there was no existing construction as on 31.12.2014 of permanent nature and the construction made subsequently is not covered by G.O.Ms.No.128 supra. The petitioner could not substantiate anything by record other than the oral say that there was any permanent construction as on 31.12.2014. Having regard to the above, the temporary permission accorded which is subject to final approval of field verification from say of the respondents show deviations as pointed out in the show cause notice vis-à-vis written instructions of the respondents. Once it is to the constructions existing as on 31.12.2014 the scheme applies and the further construction made with any deviations enable the respondents to demolish or otherwise proceed with by following due process of law, the writ petition can be disposed of subject to the above.

Accordingly and in the result, the Writ Petition is disposed of by giving liberty to the petitioner to make representation within one week from the date of receipt of this order as reply to the said show cause notice dated 27.01.2018 if there is any existing permanent constructions by the time of the last date of the application of the scheme of 31.12.2014 to consider by the

respondents to that extent to regularize and for rest to proceed according to law after passing a reasoned order on receiving of the representation as reply and on communication of the same. Needless to say it is not a bar for the petitioner to apply for fresh permission for any future construction according to law.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.01.2018
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