

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.11314 OF 2021

ORDER:

This petition under Article 226 of the Constitution of India is filed seeking the following relief:-

“... to issue a Writ of Mandamus, declaring the notice dated 31.05.2021 issued by the Commissioner, Pamidi Nagar Panchayath, the respondent No.2 herein, under Sections 192 and 336 of Andhra Pradesh Municipality Act, 1965 for removal of alleged encroachments of petitioner's under construction premises without giving her an opportunity of hearing, without making personnel inspection, without specifying alleged projections, encroachments, obstructions which ought to be removed from petitioner's premises bearing No.1/232A, Pamidi Village, Anantapur District as illegal, arbitrary and set aside the same and pass such other order or orders ...”

2. The case of the petitioner is that, she is the owner of house bearing D.No.1/232A, Pamidi Village, Anantapur District having constructed the house in site assigned by competent officials by proceedings dated 03.05.1998 after obtaining permission from the concerned authorities in the year, 1998. The petitioner constructed a house according to sanctioned plan in accordance with the Gram Panchayat. The said Panchayat was later converted into Nagar Panchayat, while so, with a view to reconstruct new premises after removing old dilapidated premises she started construction after preferring application dated 15.04.2021 along with plan, as no order was passed though 30 days period was expired after application, the petitioner started construction of house.

3. As the matter stood thus, on 31.05.2021, the petitioner received notice dated 31.05.2021 directing her to remove alleged illegal constructions in her premises alleged to have been encroached in to road margin, within seven(7) days with a threatened action. Petitioner failed to remove the same. In response to the notice, she personally meet officials concerned and orally requested the 2nd respondent but no action was taken after issue of direction to remove the encroachment.

4. The main grievance of the petitioner is that straight away an order was passed for removal of alleged encroachment by exercising power under Section 192 and 336 of Andhra Pradesh Municipalities Act, 1965 (*for short 'the Act'*) and directed to remove the alleged encroachment without affording an opportunity to explain.

5. During hearing, Sri N.Chandhra Sekhar Reddy, learned Counsel for the petitioner reiterated the contention while drawing attention of this Court to the notice impugned dated 31.05.2021 whereunder the petitioner is directed to remove encroachment in an extent of 121 Sq. mtrs of road margin, which is objectionable, within Seven (7) days.

6. Whereas, Sri N.Ranga Reddy, learned Standing Counsel for Municipalities requested to treat the notice as a provisional notice and direct the petitioner to submit explanation to the notice and on submission of such explanation after affording an opportunity, the 2nd respondent/ Municipal Commissioner will pass appropriate orders.

7. In view of the request made by the learned Standing Counsel for Municipalities and considering the facts and circumstances of the case, it is clear that straight away an order was passed directing the petitioner to remove the encroachment in an extent of 121 Sq.mtrs. of road margin alleging that it is an illegal encroachment. But, the petitioner disputing the same and therefore it is appropriate to treat notice impugned in the writ petition as provisional notice while permitting the petitioner to submit her explanation within three (3) weeks from today and on submission of explanation, the 2nd respondent is directed to pass appropriate order after affording a reasonable opportunity to the petitioner within fifteen(15) days thereafter, in accordance with law. Both the parties are directed to maintain *Status quo* as on today till passing order.

8. With the above direction, this Writ Petition is disposed of at the stage of admission. No costs.

Consequently, miscellaneous applications pending, if any in the Writ Petition, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 18.06.2021
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