*HON'BLE SRI JUSTICE RAVI NATH TILHARI

+**WRIT PETITION No.11598 OF 2023**

%10.05.2023

……Petitioner

And:

$1. The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Municipal Administration
Department, A.P. Secretariat
Buildings, Velagapudi, Guntur
District, Andhra Pradesh
and others.

….Respondents/Respondents.

!Counsel for the petitioner : Sri Chalasani Venkaiah

^Counsel for the respondents : GP for MA for respondent No.1, Sri G. Naresh Kumar, learned counsel, representing M. Manohar Reddy, Standing Counsel for respondent Nos.2 and 3

<Gist:

>Head Note:

? Cases referred:

1. 2013 (6) ALT 42
2. W.P.No.27315 of 2022
3. 2012 (1) ALT 524
4. 2013 (2) ALT 517
5. 1994 (3) ALT 73
6. 2022 SCC Online AP 2019
7. (2010) 9 SCC 496
8. (2010) 4 SCC 785
9. (2006) 3 SCC 208

HIGH COURT OF ANDHRA PRADESH

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Rep. by its Principal Secretary,
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District, Andhra Pradesh
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DATE OF JUDGMENT PRONOUNCED: 10.05.2023.

SUBMITTED FOR APPROVAL:
THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be Allowed to see the judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

_____

RAVI NATH TILHARI, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.11598 OF 2023

JUDGMENT:-

1. Heard Sri C. Venkaiah, learned counsel for the petitioner and learned Government Pleader for Municipal Administration for the respondent No.1 and Sri G. Naresh Kumar, learned counsel, representing Sri M. Manohar Reddy, learned Standing Counsel for the respondent Nos.2 and 3, the Eluru Municipal Corporation and its authority.

2. In the facts and circumstances of the case, issuance of notice to respondent No.4 is considered not necessary and is dispensed with.

3. The Writ Petition is being deciding finally with the consent of the learned counsels for the parties.

4. This writ petition under Article 226 of the Constitution of India has been filed for the following relief:-

> *"It is therefore prayed that the Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus or any other writ under Article 226 of constitution of India declaring the confirmation order issued under Sec. 452 (2) and 461 (2) r/w 428, 429 of A. P. Municipal Corporation Act, 1955 and under 89 (3) of A. P. M. R. and U. D. A. Act 2016 by 2nd respondent - Municipal Commissioner, vide notice No. 16/1075/ELR/UC/ 2023, dated 24.04.2023*

threatening to take action in respect of constructions of petitioners residential house in two floors situated in Door No.23B-6-14/1, though mentioned in the house tax receipt as 23B-6-14/2 of Eluru Municipal Corporation in the site of 193 Sq. yards in TS. No. 101/84 without considering petitioner's detailed written reply explanations submitted to official respondents dated 18.01.2023 and 18.04.2023 as illegal, arbitrary, ultravires, contrary to the procedure established by Law and contrary to the principles of natural justice and against the spirit of judgment reported in 2013 (6) ALT page 42 held by the Hon'ble High Court of Andhra Pradesh between Kadiyala Sudarsan and others vs. Government of A. P., represented by its Principal Secretary and others apart from being violative of Article 21 and 300-A of Constitution of India and consequently direct the respondents not to interfere with petitioner's possession and enjoyment of said residential house by setting aside the impugned confirmation order dated 24.04.2023 in the interest of justice and pass such other order or orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case".

5. Briefly stated facts of the case are that the petitioner's father purchased an extent of 193 Sq. Yrds of site situated in RS.No.101/84, bearing Door No.23B-6-14/1 of Eluru Municipal Corporation under a registered sale deed dated 11.03.1985 from one, Indana Mallikarjuna Rao and constructed ground floor with slab and first floor after obtaining sanctioned plan from the respondent No.2, the Eluru Municipal Corporation after the death of the petitioner's father in 2006, the petitioner

is residing with his family in the said house. Recently, the western side of the house wall of the first floor building and some other portion was damaged. The petitioner started carrying out the repairs without damaging the nature of the building and not in violation of the rules or structural stability of the building.

6. It is the further case of the petitioner that the respondent No.4, his neighbor filed W.P.No.42358 of 2022 for direction to the Corporation to take action on his representation on the allegation that the constructions were unauthorized. The writ petition was disposed of on 02.02.2023, with direction to the respondent No.2 to take steps to demolish the unauthorized construction after giving notice to the present petitioner by following due process of law. The petitioner filed W.A.No.297 of 2023 which was withdrawn and thereafter, he filed I.A.No.1 of 2023 in W.P.No.42358 of 2022 for setting aside the ex-parte order dated 02.02.2023 which is pending.

7. The respondent No.2 issued provisional order/notice under Sections 452(1) and 461(1) and other provisions of the statute dated 12.01.2023 no sufficient cause as to why the construction should not be removed/altered or pulled down within a specified period. The petitioner filed written reply dated 18.01.2023, inter alia submitting that the construction was raised under the

plans dated 16.05.1990 and there was no new construction nor any unauthorized construction. The reply was received by the respondent No.3 on 19.01.2023.

8. Again on 10.04.2023, a similar show cause notice was issued to which the petitioner filed reply on 18.04.2023 by Registered Post with Acknowledge Due to the respondent Nos. 2 and 3 which was received by the authorities, evident from the postal acknowledge dated 21.04.2023. The impugned confirmation order was passed on 24.04.2023.

9. Learned counsel for the petitioner submits that the impugned order of confirmation dated 24.04.2023 for demolition of the petitioner's construction is not a reasoned order. It is vague, without considering the petitioner's reply to the show cause notice and in violation of the principles of natural justice.

10. He places reliance in ***Kadiyala Sudershan and others vs. Government of Andhra Pradesh, rep. by its Principal Secretary, Revenue Department and others***[1].

11. On 03.05.2023, in view of the submission advanced as also noticing the contradiction in the impugned order of confirmation and finding prima facie, non-application of mind by the Authority, in passing order on printed proforma, this

[1] 2013 (6) ALT 42

Court directed the Commissioner of the Eluru Municipal Corporation to appear before this Court today.

12. The order dated 03.05.2023 reads as under:-

> *"Learned counsel for the petitioner submits that the petitioner was issued show cause notice/provisional order dated 12.01.2023, to which the petitioner filed reply on 18.01.2023. Again another show cause notice/provisional order dated 10.04.2023, was issued to which the petitioner filed reply on 18.04.2023. Thereafter, the impugned order of confirmation has been passed on 24.04.2023.*
>
> *2. He submits that in the first paragraph of the impugned order, it is mentioned that the petitioner did not submit any reply, and in the second paragraph, in one sentence, it is stated that the reply submitted by the petitioner is not satisfactory.*
>
> *3. The contradiction is apparent in the impugned order, prima facie, indicating the non-application of mind by the Authority in passing the impugned order as stereotyped and on printed format.*
>
> *4. Post on 10.05.2023, on which date, the Commissioner of the 2nd respondent-Eluru Municipal Corporation shall appear before this Court to explain about the above contradiction in the order.*
>
> *5. Till the next date of listing, the operation of the impugned order shall remain stayed."*

13. Sri S. Venkata Krishna, the Commissioner of Eluru Municipal Corporation is present. He submits that the petitioner filed the reply to the show cause notice/provisional order.

14. Sri G. Naresh Kumar, submits that the same printed proforma for passing confirmation order is, available, online for the Municipal Corporations, in which only the alterations with respect to the name, the property details etc. are made and the same is digitally signed and dated.

15. The order of confirmation dated 24.04.2023 on the printed format is reproduced as under:-

"***Eluru Municipal Corporation***

CONFIRMATION ORDER

ORDERS UNDER SECTION 452(2) AND 461(2) R/W 428, 429 OF APMC ACT 1955
AND
UNDER 89(3) OF APMR & UDA ACT 2016

Notice No: 16/1075/ELR/UC/2023 *Date: 24-04-2023*

Sub:

Eluru Municipal Corporation – Town Planning Section – unauthorized construction in the premises of D.No/Plot No. 23B-6-14/1 Situtated at Chinta chettu Road Street/Colony, RRPET area – Eluru Municipal Corporation – Conformation order Section 452(2) & 461(2) of APMC Act 1955 and under Section 89(3) of APMR & UDA Act 2016 – Issued – Regarding.

Ref: 1. This Office Provisional Notice No. 16/1075/ELR/UC/2023, Date: 10-04-2023.

***

ORDER:

Whereas, in the reference cited, a show cause notice under Section 452 (1) & 461 (1) of APMC Act 1955 and 89 (1 & 2) of APMR & UDA Act 2016 was served on you/your representative to show cause as to why the portion of construction made unauthorizedly in the site mentioned above should not be removed, altered or pulled down. ***But, you have neither pulled down the unauthorized construction nor submitted any reply to the show cause notice till date****.*

Therefore, you are liable for issue of confirmation order under Section 452 (2) & 461 (2) of APMC Act 1955 under Section 89 (3) of APMR & UDA Act 2016.

Sri/Smt Ille Ratna Prasad ***has submitted a reply to the above-said show-cause notice***. ***But the reply given is not satisfactory*** *and contrary to provisions of rules is in force. Therefore, the show-cause notice issued is hereby confirmed and confirmation notice under Section 452 (2) & 461 (2) of APMC Act 1955 and 86, 89 (3) of APMR & UDA Act – 2016 is issued once again you are hereby instructed to bring down you construction into the rule frame within (7) seven days from the receipt of the notice. Otherwise, action will be initiated against your construction as per the provisions of the act.*

For Commissioner
Eluru Municipal Corporation

To

Sri/Smt Ille Ratna Prasad,
D.No/Plot No.23B-6-14/1,
Chinta chettu Road Street/Colony,
RRPET.

Signature valid

Digitally signed by Srinivasu YANDAMURI
Date: 2023.04.24 15:59:51 +05:30
Assistant City Planner, UCIMS 2st Notice Authority"

16. A perusal of the aforesaid, shows that in the first para it is mentioned "But, you have neither pulled down the unauthorized construction nor submitted any reply to the show cause notice till date....", and in the second para, it is mentioned "But the reply given is not satisfactory and contrary to the provisions of rules is in force...".

17. The contradiction is apparent. If as per first para, reply is not filed, where is the occasion to consider it and say, in second para that the reply given is not satisfactory.

18. Section 452 of the Municipal Corporation Act provides as under:-

> *"452. Proceedings to be taken in respect of building or work commenced contrary to Act or bye-laws:- (1) If the erection of any building or the execution of any such work as is described in Section 433 is commenced or carried out contrary to the provisions of this Act or bye-laws made thereunder, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 426 shall:*
>
> *(a) by written notice, require the person who is erecting or re-erecting such building or executing such work or has erected or re-erected such building or executed such work, on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by agent duly authorized by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or*
>
> *(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorized by him in that behalf, to show sufficient cause why such building or work shall not be removed, altered or pulled down.*
>
> *(2) If such person shall fail to show sufficient cause as required under Clause (a) or (b) of sub-section (1), to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person."*

19. Section 461 of Municipal Corporation Act provides as under:-

> *"**461. Powers of Commissioner to direct removal of person directing unlawful work:**-- (1) If the Commissioner is satisfied that the erection or re-erection of any building or the execution of any such work as is*

described in Section 433 has been unlawfully commenced or is being unlawfully carried on upon any premises he may, by written notice, require the person directing or carrying on such erection or re-erection or execution of work to stop the same forthwith.

(2) If such erection or re-erection or execution of work is not stopped forthwith, the Commissioner may direct that any person directing or carrying on such erection or re-erection or execution of work shall be removed from such premises by any police officer and may cause such steps to be taken as he may consider necessary to prevent the re-entry of such person on the premises without his permission.

(3) The cost o any measures taken under sub-section (2) shall be paid by the said person.

[(4) Notwithstanding anything contained in the Act, any person who, whether at his own instance or at the instance of any other person or anybody including a department of the Government undertakes or carries out construction or development of any and in contravention of the statutory master plan or without permission, approval or sanction or in contravention of any condition subject to which such permission, approval or sanction has been granted shall be punished with imprisonment for a term which may extend to three years, or with fine which shall be levied as provided in Schedules U and V of the Act read with Section 596 of the Act.]]"

20. Section 452 of the Municipal Corporation Act provides for opportunity of hearing to the person against whom the action of removal/alteration/pulling down of the building or part thereof,

as the case may be is proposed. If the person fails to show sufficient cause to the satisfaction of the Commissioner, then only the proposed action can be taken. Further, even if the cause shown is not sufficient to the satisfaction of the Commissioner, the ultimate order that may be passed may be for removal, alteration or pulling down of the building or part thereof. Here also, the Commissioner has to take a judicious decision as to what order is to be passed, considering, inter alia, the nature of violations, etc., as in all the case of violations, same order of demolition or pulling down of the building is not to be passed statutorily and necessarily.

21. Section 461 also uses the expression, 'if the Commissioner is satisfied' that the erection or re-erection of any building or the execution of any such work as is described in Section 433 has been unlawfully commenced or is being unlawfully carried on upon any premises he may, by written notice, require the person directing or carrying on such erection or re-erection or execution of work to stop the same forthwith.

22. Therefore, the consideration of the reply in cases where reply is filed, should be made objectively and judiciously. Merely saying that the reply given is not satisfactory, is not sufficient. Its no consideration at all.

23. In ***Assistant Commissioner, Commercial Tax Department, works Contract and Leasing, Kota vs. Shukla and brothers***[2], the Hon'ble Court observed and held that reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dis- satisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts.

24. In ***ACCT (supra)***, the Hon'ble Apex Court further reiterated the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of justice under our justice dispensation system. It was emphasized that recording of reasons in the orders is of

[2] (2010) 4 SCC 785

essence of judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons of acceptance or rejection of such request. The reasons, atleast sufficient to indicate the application of mind to the law before the Court is indispensible part of a sound judicial system. Another rationale pointed out by the Apex Court is that the effected party can know why the decision has gone against him. Therefore the spelling out the reasons for the order made is considered to be one of the statutory requirements of natural justice. The litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that when a party would be in a position to challenge the order on appropriate grounds. This is also for the benefit of the higher or the appellate court to ascertain the foundation for the conclusions and the exercise of the judicial discretion by the courts/authority in the legal and factual matrix of the case. In exercise of the power of judicial review the concept of reasoned orders/actions has been enforced.

25. It is apt to refer Paragraph Nos.11 to 20 of ***ACCT (supra)*** as under:-

> *11. The Supreme Court in S.N. Mukherjee v. Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States,*

emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". To enable the Courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. This Court with approval stated:-

"11. ….the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained." 12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant

or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which have taken this view.

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders.

15. In Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], the Supreme Court held as under:-

"6. .....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

16. In McDermott International Inc. v. Burn Standard Co. Ltd. and Ors. (2006) SLT 345, the Supreme Court clarified the rationality behind providing of reasons and stated the principle as follows:-

"56. ... ' ... "Reason" is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded.

The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the Arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in

Poyser and Mills' Arbitration, In re, "proper adequate reasons". Such reasons shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons.'."'

17. In Gurdial Singh Fijji v. State of Punjab [(1979) 2 SCC 368], while dealing with the matter of selection of candidates who could be under review, if not found suitable otherwise, the Court explained the reasons being a link between the materials on which certain conclusions are based and the actual conclusions and held, that where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was not legal. In this context, the Court held -

"18. ... 'Reasons' ... 'are the links between the materials on which certain conclusions are based and the actual conclusions'. The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was 'not found suitable' is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List."

This principle has been extended to administrative actions on the premise that it applies with greater rigor to the judgments of the Courts.

18. In State of Maharashtra v. Vithal Rao Pritirao Chawan [(1981) 4 SCC 129], while remanding the matter to the High

Court for examination of certain issues raised, this Court observed:

"2. … It would be for the benefit of this Court that a speaking judgment is given".

19. In the cases where the Courts have not recorded reasons in the judgment, legality, propriety and correctness of the orders by the Court of competent jurisdiction are challenged in absence of proper discussion. The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court.

20. A Bench of Bombay High Court in the case of M/s. Pipe Arts India Pvt. Ltd. V. Gangadhar Nathuji Golamare [2008 (6) Maharashtra Law Journal 280], wherein the Bench was concerned with an appeal against an order, where prayer for an interim relief was rejected without stating any reasons in a writ petition challenging the order of the Labour Court noticed, that legality, propriety and correctness of the order was challenged on the ground that no reason was recorded by the learned Single Judge while rejecting the prayer and this has seriously prejudiced the interest of justice. After a detailed discussion on the subject, the Court held:

(Mah LJ pp. 283-87, paras 8, 10 & 12-22)

"8. The Supreme Court and different High Courts have taken the view that it is always desirable to record reasons in support of the Government actions whether administrative or quasi judicial. Even if the statutory rules do not impose an obligation upon the authorities still it is expected of the authorities concerned to act fairly and in consonance with basic rule of law. These concepts would require that any

order, particularly, the order which can be subject matter of judicial review, is reasoned one. Even in Chabungbambohal Singh v. Union of India and Ors. 1995 (Suppl) 2 SCC 83, the Court held as under: (SCC pp. 85-86, para 8)

"8. … His assessment was, however, recorded as "very good" whereas qua the appellant it had been stated "unfit". As the appellant was being superseded by one of his juniors, we do not think if it was enough on the part of the Selection Committee to have merely stated "unfit", and then to recommend the name of one of his juniors. No reason for unfitness, is reflected in the proceedings, as against what earlier Selection Committees had done to which reference has already been made."

10. In Jawahar Lal Singh v. Naresh Singh and Ors. (1987) 2 SCC 222, accepting the plea that absence of examination of reasons by the High Court on the basis of which the trial Court discarded prosecution evidence and recorded the finding of an acquittal in favour of all the accused was not appropriate, the Supreme Court held that the order should record reasons. Recording of proper reasons would be essential, so that the Appellate Court would have advantage of considering the considered opinion of the High Court on the reasons which had weighed with the trial Court.

12. In State of Punjab and Ors. v. Surinder Kumar and Ors. [(1992) 1 SCC 489], while noticing the jurisdictional distinction between Article 142 and Article 226 of the Constitution of India, the Supreme Court stated that powers of the Supreme Court under Article 142 are much wider and the Supreme Court would pass orders to do complete justice. The Supreme Court further reiterated the principle with approval that the High Court has the jurisdiction to dismiss petitions or criminal revisions in limini or grant leave asked for by the petitioner but for adequate reasons which should

be recorded in the order. The High Court may not pass cryptic order in relation to regularisation of service of the respondents in view of certain directions passed by the Supreme Court under Article 142 of the Constitution of India. Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.

13. In Hindustan Times Ltd. v. Union of India and Ors. [(1998) 2 SCC 242], the Supreme Court while dealing with the cases under the Labour Laws and Employees' Provident Funds and Miscellaneous Provisions Act, 1952 observed that even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order, may be briefly.

14. Consistent with the view expressed by the Supreme Court in the afore-referred cases, in State of U.P. v. Battan and Ors. [(2001) 10 SCC 607], the Supreme Court held as under: (SCC p.608, para 4)

"4. … The High Court has not given any reasons for refusing to grant leave to file appeal against acquittal. The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order. The absence of reasons has rendered the High Court order not sustainable."

15. Similar view was also taken by the Supreme Court in the case of Raj Kishore Jha v. State of Bihar, 2003 (Supp.2) SC 354.

16. In a very recent judgment, the Supreme Court in the case of State of Orissa v. Dhaniram Luhar (2004) 5 SCC 568 while dealing with the criminal appeal, insisted that the reasons in support of the decision was a cardinal principle and the High Court should record its reasons while disposing of the matter. The Court held as under: (SCC p. 572, para 8)

'8. Even in respect of administrative orders Lord Denning, M.R. In Breen v. Amalgamated Engg. Union observed: (QB p. 191 C)

"The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

17. Following this very view, the Supreme Court in another very recent judgment delivered on 22-2-2008, in State of Rajasthan v. Rajendra Prasad Jain Criminal Appeal No. 360/2008 (Arising out of SLP (Crl.) No. 904/2007) stated that

'reason is the heartbeat of every conclusion, and without the same it becomes lifeless'.

18. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article, Blackrobed Bureaucracy Or Collegiality Under Challenge, (42 MD.L. REV. 766, 782 (1983), observed as under:-

"My own guiding principle is that virtually every appellate decision requires some statement of reasons. The discipline of

writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not."

19. The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:

"When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid."

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinized by the Appellate Court.

The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on September 13, 2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasons they must have. While speaking about purpose of the judgment, he said,

"The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -

(1) to clarify your own thoughts;

(2) to explain your decision to the parties;

(3) to communicate the reasons for the decision to the public; and

(4) to provide reasons for an appeal Court to consider."

22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential.

Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts but is even of great utility for providing public understanding of law and imposing self- discipline in the Judge as their discretion is controlled by well established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated. Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award. The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentions were raised in support of the reliefs claimed but

all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."

26. In ***S. N. Chandrashekar and another vs. State of Karnataka and others***[3], the Hon'ble Apex Court held that it is well known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate.

27. In ***S. N. Chandrashekar (supra)***, it was further held that the order passed by the statutory authority, must be judged on the basis of the contents thereof and not as explained in affidavit. Consequently the reasons for the order are necessarily required to be mentioned in the order itself.

28. Para Nos.33 and 36 of ***S. N. Chandrashekar (supra)*** read as under:-

"Judicial Review:

33. It is now well-known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate. (See De Smith's Judicial Review of Administrative Action, 5th Edn., p. 286.)

36. The order passed by the statutory authority, it is trite, must be judged on the basis of the contents thereof and not as explained in affidavit. [See Bangalore Development Authority v. R. Hanumaiah, (2005) 12 SCC 508)]"

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[3] (2006) 3 SCC 208

29. In ***Kranthi Associates Private Limited (supra)***, the Hon'ble Supreme Court summarized the principles on the point of necessity of giving reasons by a body or authority in support of its decision in Paragraph No.47 of the SCC report. It is held therein that reasons in support of decisions must be cogent, which is clear and succinct. A pretence of reasons or rubber-stamp reasons is not to be equated with a valid decision making process. The reasons are indispensible as component of a decision making process as observing principles of natural justice by judicial, quasi judicial and even by administrative authorities.

30. This Court finds that many writ petitions are filed challenging the same kind of order of confirmation, with the same grievance of the petitioner.

31. In many writ petitions this Court has passed the order directing the concerned Commissioner to pass fresh orders on due consideration of the reply.

32. To refer few, in ***Tadavarthy Kishore and othters vs. State of Andhra Pradesh and others***[4] also, the same issue was involved. This Court after considering the judgments in ***Poonamchand vs. Greater Hyderabad Municipal***

[4] W.P.No.27315 of 2022

Corporation[5], ***K. Ashok Kumar vs. Greater Hyderabad Municipal Corporation***[6] and ***ACES, Hyderabad vs. Municipal Corporation Hyderabad (FB)***[7], while quashing the order impugned therein issued direction to the Corporation to pass fresh order after considering the reply of the petitioner therein.

33. It is apt to refer paras 4 and 7 of ***Tadavarthy (supra)*** as under:-

> *"4. Sri K. Ravi, learned senior counsel for the petitioner, submits that the impugned order dated 11.08.2022 has been passed without application of mind and in cyclostyle manner. He submits that the 1st paragraph of the impugned order mentions that the petitioner did not file any reply to the show cause notice/the provisional order, whereas in the second paragraph it has been mentioned that the reply given by the petitioner is not satisfactory and contrary to provisions of rules in force. He submits that the reply was filed by the petitioner on 01.08.2022 though admitting that there were some minor deviations and that he will regularize the same in future. He further submits that the order was passed under Section 452 (2) & 461(2) of APMC Act 1955 and under Section 115(3) of APCRDA Act, 2014, which is revisionable under Section 679 of the APMC Act 1955 and also appealable under Section 115 (7) of APCRDA Act 2014 for which there is period of limitation of 15 days from the date of service of the order which was served on 16.08.2022 which has not yet expired, but in spite thereof,*

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[5] 2012 (1) ALT 524
[6] 2013 (2) ALT 517
[7] 1994 (3) ALT 73

the officials of the respondents 2 and 3 are approaching the subject property of the petitioners for demolition.

7. A perusal of the impugned order dated 11.08.2022, clearly shows non-application of mind. In the first paragraph it is stated that the reply was not submitted and in the second paragraph it is mentioned that the reply given is not satisfactory and that too without disclosing any reason as to how and why the explanation of the petitioners was not satisfactory. The order as passed is a cyclostyle order. The explanation offered by the petitioners ought to have been considered."

34. In ***Tadavarthy Kishore (supra)***, this Court clearly laid down that, whether the deviations, as per the provisional order, are minor, minimal or trivial, or affect public at large or in public interest or not, or cause public nuisance or hazardous or dangerous to public safety including of the residents, require consideration by the competent authority of the Municipal Corporation before resorting to the demolition. In this respect this Court referred to the Full Bench judgment in ***ACES, Hyderabad (supra)*** in which Section 452 of the A.P. Municipal Corporation Act itself was for consideration.

35. In another case, ***E. V. Rama Rao vs. State of Andhra Pradesh and others***[8] also the same issue fell for consideration. This Court after referring to the judgments as aforesaid, as also emphasizing the necessity of giving reasons by a body or

[8] 2022 SCC Online AP 2019

authority in support of its decision, referring to ***Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others***[9] allowed that writ petition, as the order impugned therein did not assign any reason for not accepting the explanation submitted, and directed the Municipal Corporation therein to pass fresh order.

36. It is apt to refer Paragraph Nos.18 to 22 of ***E. V. Rama Rao (supra)*** are reproduced as under:-

> *"18. The Court also finds from the perusal of the impugned order that it contains contradiction on the point of submission of the reply by the petitioner, in as much as in the first paragraph it is stated that the petitioner did not submit any reply, whereas in the second paragraph, it has been stated that the reply given is not satisfactory, and contrary to the provisions and rules, but without discussing as to in what respect and as to how it was contrary to what rules.*
>
> *19. In Poonamchand (supra) this Court has held in para-7 as under:*
>
> > *"7.* ***A perusal of the impugned notice shows that respondent No.1 has not dealt with the explanation of the petitioner and has rejected the same with a cryptic observation that the same is not satisfactory and "it may not be considered". In the opinion of this Court, the very purpose of issuing a notice under Section 452(1) of the Act is to give an opportunity to a person, who has constructed the building in an***

[9] (2010) 9 SCC 496

illegal or unauthorised manner, to submit his explanation. It is, therefore, obligatory on the part of respondent No.1 to consider the explanation. *If satisfactory explanation is offered by the owner of the building, respondent No. 1 shall drop further proceedings. It is only in cases where such explanation is not offered, that respondent No.1 is not entitled to proceed further. Unless the Commissioner refers to the contents of the explanation and gives reasons for coming to the conclusion that the explanation is not satisfactory, he cannot proceed with further action and issue notice under Section 636 of the Act. Failure to deal with the explanation renders the very purpose of issuing notice nugatory."*

20. In K. Ashok Kumar (supra) this Court held in paras-2 & 3 as under:

"2. Section 636 of the Act gives power to the Commissioner to require any construction made without obtaining necessary permission to be removed and in case the person to whom such a direction was issued by the Commissioner ignores or fails to remove any structure within the time specified, the said task will be carried out by the corporation at the expense of the said individual. It is not in dispute that the petitioners have been issued a notice in terms of Section 452 of the Act on 31.7.2012 for which a detailed reply has been filed by the petitioners on 16.8.2012. They raised several objections. ***Whether those objections are tenable or otherwise would be decided by the person who is concluding the exercise in accordance with Section 636 of the Act. Whereas the***

relevant portion of the impugned order reads as under:

"the reply submitted by you vide reference 3rd cited in response to the show-cause notice has been examined and the same is not found satisfactory."

"3. To say the least this is most unsatisfactory way of deciding an issue. Every order must contain the reasons for the conclusion arrived thereat. It is the reasons which provide the links to the conclusions. The relevance of those reasons must lend support to the conclusion. ***The expressions "found not satisfactory" are reflective of the conclusion but, not the reason. As to why the explanation offered by the petitioners is not satisfactory, forms part of their process of reasoning."***

21. In Kranti Associates (P) Ltd. v. Masood Ahmed Khan on the point of necessity of giving reasons by a body or authority in support of its decision, the Hon'ble Apex Court summarized the legal position in paragraph-47, which is reproduced as under:

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power*.*

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies*.*

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making

process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37])

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

22. The order impugned does not assign any cogent reason for not accepting the explanation submitted by the petitioner and the same is no consideration at all."

37. Right to Property is recognized as a human right. It's a right guaranteed by the Constitution of India as well under Article 300-A, not to be deprived of it save by authority of law. Orders of demolition/removal of the one's property, in the manner, like the one, as in the present case, cannot be sustained as it would deprive the person of his constitutional right to property not in accordance with law.

38. Passing an order on the printed proforma, does not comply with the requirements of statutory provisions nor with the principles of natural justice. The order is not to be passed mechanically, just signing the printed format. There should be consideration of the reply to the show cause notice and assigning the reasons.

39. The administrative authority and the tribunals are also obliged to give reasons absence whereof would render the order liable to be judicial chastise. There should be no pretence of reason or rubber-stamp reasons.

40. This practice, by the respondent authorities of passing printed format order must be stopped. The authorities have to discharge their statutory duty as per mandate of law, with due

consideration of the facts submitted in reply to the show cause notice, and recording their satisfaction, either way, supported with reasons which should be assigned in the order itself.

41. There may be many genuine cases, where the constructions are in violation of the rule or the building plans or there is encroachment. But, because of the Authorities not discharging their statutory duty in a manner recognized by law, in passing the order statutorily, and in consonance with Principles of Natural Justice, such orders cannot be permitted to be implemented, with the ultimate result that, the objects of the Municipal Corporation Act are defeated. From the point of view of the party adversely affected, he is compelled to undergo many rounds of litigation, unnecessarily to the disadvantage of time, money and like factors. All this can be curbed, if the Authorities pass the orders as per the statutory and judicial mandates.

42. In the result, this writ petition is partly allowed setting aside the order dated 24.04.2023, with the direction to respondent No.2 to pass fresh orders in the petitioner's case, in accordance with law within two (02) weeks from the date of receipt of copy of this judgment.

43. The petitioner shall submit copy of this order before respondent No.2 in one (01) week, from its receipt.

44. A Writ of Mandamus is issued in General to the respondent Nos.1 to 3 and all Municipal Corporations through their authorities, that no order will be passed on the printed format by the Municipal Authorities under Sections 452 & 461 of the Municipal Corporation Act. They shall pass orders on consideration of the reply submitted and such consideration be manifested in the order on assigning of the reasons for the satisfaction eitherway, recorded in the order itself.

45. The respondent No.1/Principal Secretary is directed to issue necessary orders at his end, to all the concerned of the Municipal Corporations in the State of Andhra Pradesh for compliance.

46. The Registry shall send copy of this judgment to respondent No.1/Principal Secretary for compliance.

47. Writ Petition is allowed in part with directions aforesaid.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

Date: 10.05.2023
Note:-
Issue C. C by 24.05.2023
B/o:- SCS

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.11598 OF 2023

Date:10.05.2023

Scs.