HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 25816 of 2022

Between:

E.V.Rama Rao

.....PETITIONER

AND

The State of Andhra Pradesh, Revenue,
Rep.by its Principal Secretary,
MA & UD Department, Secretariat Buildings,
Velagapudi, Amaravathi,
Guntur District and 2 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **16.08.2022**

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

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RAVI NATH TILHARI, J

* **THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

\+ WRIT PETITION No. 25816 of 2022

% 16.08.2022

E.V.Rama Rao

....Petitioner

Versus

$ The State of Andhra Pradesh, Revenue,
Rep.by its Principal Secretary,
MA & UD Department, Secretariat Buildings,
Velagapudi, Amaravathi,
Guntur District and 2 others

.....Respondents

! Counsel for the Petitioner: Sri P. RAJASEKHAR

^ Counsel for the respondents: GP FOR Municipal Admn. for R1
Sri G. NARESH KUMAR,
rep. Sri M.MANOHARA REDDY
for R2 & R3

< Gist :

> Head Note:

? Cases Referred:

1. 2012 (1) ALT 524 (S.B)
2. 2013 (2) ALT 517 (S.B)
3. 1994 (3) ALT 73
4. (2010) 9 SCC 496

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION Nos. 25816 of 2022

JUDGMENT:

Heard Sri P. Rajasekhar, learned counsel for the petitioner, learned GP for Municipal Administration, representing respondent No.1, and Sri G. Naresh Kumar, representing Sri M. Manohara Reddy, learned counsel for respondents No.2 & 3.

2. With the consent of the learned counsels for the parties, the writ petition is being decided at the admission stage without calling for counter affidavit.

3. This writ petition has been filed under Article 226 of the Constitution of India for the following reliefs:

> "…to declare the Notice No.85/1075/ELR//UC2021, dated 12.08.2022 issued by the 2nd respondent confirming the show cause notice dated 12.05.2021 and directed petitioner to bring the construction covered by D.No.23B-5-2/1 situated in Edaravari Street, Revenue Ward No.26, RR Peta, Eluru, West Godavari District into the rule frame within 7 days as illegal, arbitrary, unconstitutional and contrary to the provisions of Andhra Pradesh Municipal Corporation Act, 1995 and consequently command the respondents not to take any coercive steps of demolitions, in any manner, in the interests of justice and pass such other order or orders….."

4. Sri P. Rajasekhar, learned counsel for the petitioner, submits that the petitioner is the absolute owner and is in possession of house site admeasuring 1050 sq.yards covered by D.No.23B-5-2/1 situated in Edaravari street, Revenue Ward No.26, RR Peta, Eluru, West Godavari District. Pursuant to the petitioner's application dated 10.10.2018, the 2nd respondent granted building permission vide Permit No.1075/0339/B/ELR./RRPet/2018, dated 30.10.2018 for construction of G+5 floors and though the petitioner raised only G+4 floors but as per the

sanctioned plan. The 2nd respondent issued a provisional order/notice under Section 452 (1) & 461 (1) of A.P.Municipal Corporation Act, 1965, (in short 'MC Act, 1965') and under sections 86, 89 (1&2), 90(1) of A.P.Metropolitan Regional and Urban Development Authority Act, 2016, which Act of 2016, according to the learned counsel for the petitioner has no application, giving details of the deviations / violations identified in the tabular form and asking the petitioner to submit reply as to why the deviations / violations could not be removed / altered or pulled down within specified time, failing which, it will be treated as a continuous and intentional offence and further action will be taken as per the provisions mentioned in the provisional order.

5. The petitioner submitted reply dated 16.07.2021, Ex.P3, acknowledging the show cause notice/provisional order, and submitting that due to some 'Vastu' complaints there is some deviation in the construction and requested in effect and substance that as per the Government norms and the regularization scheme, the petitioner is willing to pay for regularization of such deviations. The 2nd respondent through its Commissioner passed the impugned order dated 12.08.2022, Ex.P5, confirming the provisional order. Challenging which, the present writ petition is filed.

6. Sri P. Rajasekhar, learned counsel for the petitioner, submits that though the petitioner filed reply to the show cause notice/provisional order, but in the impugned order, in the first paragraph, it is incorrectly mentioned that the petitioner did not submit any reply to the show cause notice, whereas in the last paragraph, it has been mentioned that the reply given is not satisfactory, which as such contains contradictory statements. He further submits that the petitioner's reply, in fact, has not been considered, in as much as the petitioner's prayer for regularization of

deviations shown in the show cause notice/provisional order has not been considered at all, but the order merely states that the reply given is not satisfactory which is in fact no consideration and frustrates the purpose of giving the notice and filing of reply.

7. Sri P. Rajasekhar further submits that the deviations as mentioned in the provisional order dated 12.05.2021, are minor in nature which would not affect the public at large and some of the deviations are liable to be regularized under Rule 3 (33) clause (g) of the A.P. Building Rules, 2017 and for the other deviations which as per the provisional order may not be regularized but still cannot be demolished as they do not affect the public at large. He submits that though the petitioner has valid defence/objections to the provisional order those were not raised in the explanation as the petitioner instead of litigation wanted for regularization of the deviations under the rules, but once such prayer was not even considered the petitioner may be given opportunity to file additional objections to the provisional order to meet the ends of justice.

8. Learned counsel for the petitioner has placed reliance on the judgments in the case of ***Poonamchand v. Greater Hyderabad Municipal Corporation***[1] to contend that the rejection of the explanation by cryptic observation defeats the very purpose of issuance of notice, and in the case of ***K. Ashok Kumar v. Greater Hyderabad Municipal Corporation***[2] to contend that merely stating that the explanation submitted is not satisfactory, is not sufficient but the order must contain the reasons for the conclusions arrived at. He has further placed reliance in the case of ***ACES, Hyderabad v. Municipal Corporation of***

[1] 2012 (1) ALT 524 (S.B)
[2] 2013 (2) ALT 517 (S.B)

Hyderabad[3] to contend that the Full Bench of this Court issued certain directions/guidelines, as illustrative, to the Corporation, in cases of some deviations in the building construction and set back plan holding that the deviations or violations if are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.

9. Sri G. Naresh Kumar, learned counsel appearing for the respondents, submits that the rules which permit regularization of deviations is not with respect to all kinds of deviations and the set back, but only the deviations to the extent of 10% maximum and that too with respect to the deviations which are not the front set back. He submits that the petitioner in his reply did not submit anything with respect to the deviations, but only requested for regularization of those deviations whereas any scheme for regularization is presently not prevalent, which scheme for regularization was there in the year 2019.

10. To the aforesaid submission, Sri P.Rajasekhar submits that the scheme for regularization was extended from time to time and even otherwise if the deviations had been timely pointed out by passing provisional order with respect to the constructions raised in 2018-19 the petitioner could have availed the scheme even if prevalent in the year 2019. In any case, the petitioner's explanation for regularization required consideration in view of the statutory provisions of Rule 3 (33)(g) of the Rules which has not been considered.

11. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

12. So far as the deviations in the constructions of building is concerned, it being a question of fact, as to whether within the permissible percentage to be regularized or not or affecting the public at

[3] 1994 (3) ALT 73

large or not, cannot be adjudicated in the exercise of writ jurisdiction, at this stage, as it requires consideration by the competent authority taking into account various aspects with due opportunity of hearing to the concerned, at the first stage. The Court, therefore, is not entering into this aspect of the matter.

13. There is no dispute that Rule 3 (33) (g) of the A.P.Building Rules, 2017 provides for regularization of the deviations to certain extent and of certain nature. Even if regularization is not permissible under the rules beyond certain percentage, the competent authority to the extent permissible can grant regularization and passing appropriate order with respect to the percentage beyond permissible limit.

14. The Full Bench of this Court in ***ACES, Hyderabad*** (supra), with respect to the building deviations issued directions in para-36 which is reproduced as under:

> "**36.** Having regard to the rampant, illegal and unauthorised constructions raised in the country as observed in *State of Maharashtra's case* (AIR 1991 SC 1453) (supra) before parting with this case, we would like to formulate the following guidelines to be followed by the respondent in respect of illegal constructions. The guidelines should not be treated as exhaustive but only illustrative and the discretion to be exercised by the Corporation in any given case should not be arbitrary or capricious.
>
> 1) In cases where applications having been duly filed in accordance with law, after fulfilling all requirements, seeking permission to construct buildings and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the construction are not in public interest or cause public nuisance or hazardous or dangerous to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.

2) whatever is stated in guideline number (1) will also equally apply to the permissions deemed to have been granted under Section 437 of "The Act".

3) If no application has been filed seeking permission and the construction is made without any permission whatsoever, it is open to the Corporation to demolish and pull down or remove the said unauthorised structure in its discretion. Otherwise, having regard to the facts and circumstances of the case, it will be putting a premium on the unauthorised construction.

When the Corporation comes to the conclusion, keeping the above guidelines in view, that the construction in question is required to be demolished or pull down, it should follow the procedure indicated below:

(i) The demolition should not be resorted to during festival days declared by the State Government as public holidays excluding Sundays. If the festival day declared by the Government as a public holiday falls on a Sunday, on that Sunday also, the Corporation should not resort to demolition.

(ii) In any case, there should not be any demolition after sun set and before sun rise.

(iii) The Corporation should give notice of demolition as required by the statute fixing the date of demolition. Even on the said date, before actually resorting to the demolition, the Corporation should give reasonable time, depending upon the premises sought to be demolished, for the inmates to withdraw from the premises: If within the time given the inmates do not withdraw, the Corporation may proceed with actual demolition.

These guidelines are laid down in view of the fact that the Corporation is a public authority and its action must be tested on the touchstone of fairness and reasonableness."

15. Whether the deviation in the present case, 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 therein require consideration by the competent authority of the Corporation before resorting to the demolition. In the Full Bench judgment Section 452 of the A.P.Municipal Corporation Act itself was for consideration.

16. However, the petitioner's case for regularization has not been considered at all, which the authority, in view of the explanation submitted, was required to consider.

17. Sri G. Naresh Kumar has fairly admitted that there is no consideration of the petitioner's explanation on regularization on specific grounds.

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 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***[4] 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.

[4] (2010) 9 SCC 496

(*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.

23. For all the aforesaid reasons, the order impugned cannot be sustained.

24. The Writ Petition is allowed. The impugned order dated 12.08.2022 is quashed only on the aforesaid ground.

25. The 2nd respondent shall proceed to pass fresh orders, in accordance with law, after taking into consideration the petitioner's explanation submitted. It shall be open to the petitioner to file additional reply to the notice/provisional order dated 12.05.2021 within a period of two weeks from today. If additional reply is filed, the same shall also be considered by the concerned authority, in accordance with law.

26. The final order shall be passed within a period of two months from the date of production of a copy of this judgment before the authority concerned.

27. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 16.08.2022
Dsr

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