

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.35916 of 2022

JUDGMENT:-

1. Heard Sri T.Sai Surya, learned counsel for the petitioners and learned Government Pleader for Municipal Administration for the respondent No.1, Sri G.Naresh Kumar, learned counsel, representing Sri M.Manohar Reddy, learned Standing Counsel for the respondent No.2 and Sri I.Koti Reddy, learned Standing counsel for the respondent No.3.

2. All the petitioners, except petitioner Nos.3, 4 and 14, are present in person represented by their counsel Sri T.Sai Surya, who represents that those petitioner Nos.3, 4 and 14 could not appear due to health issues. Their personal presence is dispensed with.

3. The presence of the petitioners was directed by order dated 22.11.2022, in view of the fact that in the writ petition a clear statement was made on affidavit that the notices/orders impugned in the writ petition were not preceded by any show cause notice.

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

“It is therefore prayed that this Hon’ble Court pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the Notice in Encroachment No.681/2022/G1, dt. 21.05.2022 issued by the 2nd respondent directing to remove the encroachment alleged to have been made by the petitioners under the guise of widening the existing road passing in front of their respective houses without there being any such encroachment at all and making efforts to demolish part of their respective houses situated by the side of Ramalayam Temple Road, Ippatam Village, Tadepalli Mandal, Guntur District, Andhra Pradesh as highly illegal, arbitrary exercise of power, violative of principles of natural justice, contrary to law and also violative of Art 19 and 300-A of the Constitution of India and consequently to set aside the said notices and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

5. The challenge to the impugned notices/orders by the petitioners is on the ground of violation of the principles of natural justice in not giving the show cause notice before issuing the final notice/order.

6. This Court on 04.11.2022, passed the following order:-

“Heard Sri K. Chidambaram, learned senior counsel, assisted by Sri T. Sai Surya, learned counsel for the petitioners and Sri G. Naresh Kumar, learned counsel, representing respondent No.2.

2. It is submitted by Sri G. Naresh Kumar, that respondent No.3 is now not in existence and has merged

in 2nd respondent. In view of this submission, learned counsel for the petitioner shall take steps to file appropriate application.

3. Sri K. Chidambaram, learned senior counsel, submits that the petitioners are challenging the impugned notice dated 21.05.2022, given to all the petitioners, which are issued on the ground that the petitioners raised unauthorised constructions and have encroached upon the public road, directing them to vacate/remove, as being violative of the principles of natural justice. Any show cause notice was not given prior to passing the impugned notice/order dated 21.05.2022 and though it refers to the previous notice dated 10.05.2022 to which any reply was not filed, but it is specifically stated in paragraph-6 of the affidavit in support of the writ petition that the impugned notices are not preceded by any show cause notice and no survey whatsoever has been conducted. He submits that even to determine the alleged encroachment or unauthorized construction, the petitioners ought to have been given opportunity of hearing.

4. Sri G. Naresh Kumar, learned counsel, representing respondent No.2, prays for and is granted 10 days time to enable him to obtain instructions with respect to the service of notice dated 10.05.2022 on the petitioners as mentioned in the impugned order/notice.

5. List on 15.11.2022.

6. No coercive action shall be taken pursuant to the impugned notice/order dated 21.05.2022 till the next date of listing.”

7. The interim order dated 04.11.2022 was passed, considering Para 6 of the affidavit in support of the writ petition,

upon which much emphasis was laid by the learned counsel for the petitioners while advancing the arguments.

8. Para 6 of the affidavit is reproduced as under:-

*“6. I submit that the impugned notices were issued without taking any steps to acquire our private sites by following the procedure as contemplated under the Land Acquisition Act and to avoid payment of compensation to us. The 2nd respondent has no power or authority to direct us to remove part of our houses alleging we encroached the same by invoking Sec.405, 406, 639 and 640 of the Municipal Corporation Act. **It is pertinent to mention here that the impugned notices are not preceded by any show cause notice** and no survey whatsoever has been conducted before issuing such notices. The said notices are issued by exercising beyond the power conferred under the provisions of the Municipal Corporation Act and the same cannot be sustained. **In any view of the matter the notices and the action of the respondents 2 and 3 is not only illegal but also violative of Principles of natural justice** and also violative of Art.19 and 300-A of the Constitution of India and the same are liable to be set aside.”*

9. On 15.11.2022, Sri G.Naresh Kumar, learned counsel representing the respondent No.2, based on written instructions submitted that previous to the passing of the impugned orders/notices dated 21.05.2022, the show cause notices were served to all the petitioners. Some of the petitioners were served through registered post and some of the petitioners had received

the notices personally and had in proof of the receipt put their respective signatures.

10. Copy of the instructions with copy of the notices and the service report of the concerned post office as also receiving by the petitioners was placed before the Court which was taken on record.

11. Learned counsel for the petitioners was also given one set thereof to ascertain those facts from the petitioners.

12. The respondent No.2 was also granted time to bring on record all such documents on affidavit.

13. This Court passed the order dated 15.11.2022, as follows:-

“Heard Sri K. Chidambaram, learned senior counsel, assisted by Sri T. Sai Surya, learned counsel for the petitioners and Sri G. Naresh Kumar, learned counsel, representing respondent No.2.

2. The petitioners challenged the impugned notices dated 21.05.2022 issued to them individually on the specific ground as in para-6 of the affidavit in support of the writ petition that the impugned notices were not preceded by any show cause notice. The impugned notices referred to previous notice dated 10.05.2022, but in view of the specific averments made in para-6 of the writ petition, this Court while granting time to the learned standing counsel for the Corporation to seek instructions, granted interim order that no coercive action shall be taken pursuant to

the impugned notice dated 21.05.2022, till the next date of listing i.e., 15.11.2022.

3. Sri G. Naresh Kumar, learned counsel, representing respondent No.2, based on written instructions, supported by documents, submits that before issuance of the impugned notices dated 21.05.2022, notices dated 29.04.2022 to some petitioners and to the rest of the petitioners the notice dated 30.04.2022 were issued. Petitioners Nos.1, 2, 3, 4, 6, 7 and 14 were issued the notices through RPAD dated 10.05.2022 and as per service report from the concerned Post Offices, the registered post notices were served on different dates, but before the impugned notice dated 21.05.2022 was issued. He further submits that petitioners No.5, 8, 9, 10, 11, 12 and 13 manually/personally received the notices and in this respect he has placed before the Court the copies of the notices as also the endorsement of receiving, and also the service report on the petitioners through RPAD as mentioned above.

4. The same is taken on record.

5. A copy of the instructions along with all the copies of notices as also the report with respect to the service through RPAD has been given to the learned counsel for the petitioners in Court.

6. Respondent No.2 shall, within a week bring on record by way of affidavit all such documents, positively, failing which, the respondent No.2 shall appear personally before the Court.

7. Learned counsel for the petitioners shall also ascertain the fact from their respective petitioners before the next date of listing for which no further time shall be granted.

8. List on 22.11.2022.

9. Interim order granted earlier is extended only till 22.11.2022.

10. On the next date of listing, the matter shall not be adjourned.

11. The Registrar Judicial of this Court, as also the Registry are directed not to entertain any letter request, any memo or/and any application of the petitioners or any of the petitioners for withdrawal of the writ petition.”

14. The respondent No.1 has filed affidavit on 21.11.2022, vide U.S.R.No.88460 of 2022, which is on record.

15. Any affidavit by the petitioners, contrary to the service of the show cause notice on them, preceding the impugned notice/order, has not been filed.

16. On 22.11.2022, Sri T.Sai Surya, learned counsel for the petitioners, who also appeared for the petitioners on 15.11.2022, submitted that the petitioners admit that the show cause notice was served on all the petitioners and the impugned notices/orders were passed after affording them opportunity of hearing and what is deposed in Para 6 of the affidavit in support of the writ petition is not correct.

17. On 22.11.2022, this Court passed the following order and directed the petitioners to appear in person.

“1. Sri T.Sai Surya, learned counsel for the petitioners orally admits that show-cause-notice was served on all the petitioners and the impugned orders were passed after affording opportunity of hearing but in the writ

petition at para-6, it is stated that “it is pertinent to mention here that the impugned notices are not preceded by any show cause notice”.

2. *This Court passed the interim order dated 15.11.2022 on the ground that no show cause notice was issued referring to para-6 of the affidavit by the learned counsel for the petitioners, as mentioned in the interim order itself.*

3. *The interim order dated 15.11.2022 is vacated.*

4. *All the petitioners shall appear in person before this court on 24.11.2022 to explain as to why action be not taken against them for abusing the process of the court and also for initiating the proceedings for the criminal contempt.*

5. *List on 24.11.2022.*

6. *The learned counsel for the petitioners shall ensure the presence of all the petitioners before the court on 24.11.2022.”*

18. Today, all the petitioners, except 3, 4 and 14 are present.

19. Learned counsel for the petitioners submits that the petitioners present do not know English or Hindi. But they know only ‘Telugu’.

20. The Court requested Sri S.Lakshminarayana Reddy, learned advocate present in the Court, to assist the Court by explaining to all the petitioners what the Court asks them, in ‘Telugu’ and to communicate the same to the Court.

21. Sri S.Lakshminarayana Reddy, submits that those petitioners admit that the show cause notices as annexed with

the affidavit of the respondent No.2 and provided to their counsel on previous date i.e. 15.11.2022, were previously served upon them by the respondent No.2, but they come forward with the explanation that they did not know the contents of those show cause notices.

22. Sri T.Sai Surya, learned counsel for the petitioners also submits the same i.e. that the petitioners are admitting the service of the show cause notices but they did not know the contents thereof.

23. He further submits that the petitioners do not know the difference between the show cause notice and the final notice/order.

24. It is evident that the fact of service of show cause notice was not disclosed in the affidavit. Not only that, specific averment to the contrary was made, that “the impugned notices are not preceded by any show cause notice” which fact is contrary to the record and now admitted by the petitioners.

25. The explanation offered by the petitioners is only after thought and cannot be believed.

26. The petitioners, as represented, know only ‘Telugu’. The show cause notices are in ‘Telugu’ and not in English or Hindi.

27. The petitioners may or may not be aware of the difference between the show cause notice and the final notice/order but

the correct fact of receipt of the earlier notices was required to be disclosed which fact was suppressed.

28. It is a clear case of suppression of material fact.

29. The interim order came to be granted for the misrepresentation made on facts which were in the knowledge of the petitioners but suppressed from the Court. Not only suppression but also making false statement contrary to the factual position.

30. The Court may also refer to the previous writ petitions by other petitioners, other than the present petitioners, in abusing the process of this Court by taking judicial notice, in which the orders were passed by this very Court, as follows:-

a) In W.P.No.25597 of 2022, Munagala Ramesh vs. State of Andhra Pradesh and others, where in the notice under Section 452 (1) of Andhra Pradesh Municipal Corporation Act, 1955 was served on the petitioner therein before passing the final order but it was represented in the writ petition that no notice was served. This Court dismissed the writ petition imposing cost of Rs.50,000/-.

b) Again in W.P.No.33403 of 2022, where also the petitioner did not disclose the filing of the previous petition on the same subject matter between the same parties and approached the Court by making a wrong statement in affidavit

that no other petition was filed by him. This Court dismissed the writ petition imposing cost of Rs.1,00,000/- (Rupees one lakh only) and also initiating the proceedings for criminal contempt.

31. In spite of the above, such things are not stopping.

32. The misstatement, wrong statement, concealment, suppression of material fact and thereby succeeding in getting favourable orders is not only interference in the administration of justice but also it directly reflects upon the honour, dignity of the Institution as also upon the trust of the people reposed in the Institution as a whole.

33. The petitioners have polluted the stream of justice. They have filed false affidavit which is an evil which must be effectively curbed with strong hand to preserve the purity of the judicial proceedings.

34. In ***Oswal Fats & Oils Ltd. Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others***¹, the Hon'ble Apex Court held that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he

¹ (2010) 4 SCC 728

owes a duty to the Court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.

35. In ***Kishore Samrite vs. State of Uttar Pradesh and others***², the Hon'ble Supreme Court held that no litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty-bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court.

36. In ***Sciemed Overseas Inc. vs. Boc India Limited and others***³, the Hon'ble Apex Court, referring to *Muthu Karuppan vs. Parithi Ilamvazhuthi* {(2011) 5 SCC 496 : (2011) 2 SCC (Cri)

² (2013) 2 SCC 398

³ (2016) 3 SCC 70

709}, in which it was held that the filing of a false affidavit should effectively be curbed with a strong hand, held that though the observation was made in the context of contempt of court proceedings, but the view expressed must be generally endorsed to preserve the purity of the judicial proceedings.

37. The petitioners have abused the process of the Court and have not approached this Court with clean hands.

38. The Court refuses to invoke its extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

39. The request of the petitioners' counsel to show sympathy and pardon the petitioners, under the circumstances, is not acceptable to the Court. The evil, deserves to be curbed with strong hands to deter not only the petitioners but also to the likeminded, to abuse the process of the Court and approach with spoiled hands. Any sympathy or leniency in such matters is not called for.

40. The writ petition is dismissed, imposing a cost of Rs.1,00,000/- (Rupees one lakh only) on each of the petitioner Nos.1 to 14.

41. Let the costs be deposited within one month from today with the Andhra Pradesh State High Court Legal Services Authority in the High Court premises, Amaravati, failing which,

immediately on expiry of one month, the Registrar of this Court shall proceed to initiate the proceedings to recover the same, from the petitioners in accordance with law.

42. Report to the above effect shall be placed on record of this petition by the Registrar of this Court.

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

RAVI NATH TILHARI,J

Date: 24.11.2022

Note:-

L.R Copy to be marked

Issue CC in one week

B/o:-SCS

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

139

WRIT PETITION No.35916 of 2022

Date: 24.11.2022

Scs