

(1989) 08 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 11190 and 11251 of 1987

B. Sivaji and Another

APPELLANT

Vs

Visakhapatnam Urban Development Authority

RESPONDENT

Date of Decision : 11-08-1989

Acts Referred:

Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 41, 42, 42(1)
Constitution of India, 1950 — Article 226

Citation : (1992) 2 ALT 142

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : S. Venkateswara Rao, for the Appellant; G.V.L. Narsimha Rao, for the Respondent

Final Decision : Allowed

Judgement

K. Ramaswamy, J.—Common question of and facts arise in these two writ petitions and therefore they are disposed of by a common judgment.

2. Admittedly, the petitioners herein constructed a shed for the establishment of a stone crushing machine in their respective premises and the impugned notice, which is purported to be the third notice under Sections 41(1) and 42(1) of A.P. Urban Development Act, 1973, was issued directing the removal of the aforesaid construction. It is against that impugned order these writ petitions were filed.

3. The learned counsel for the petitioner Sri S. Venkateswara Rao contends that the impugned order was issued u/s 42(1) read with Section 41 of the Act without giving reasonable opportunity to show cause and therefore it is violative as principles laid down u/s 42(1) of the Act. The contention of Sri G.V.L. Narsimha Rao, the learned counsel appearing for the Urban Development Authority is that the impugned notice is the third notice issued to the petitioners, that the petitioners failed to submit explanation since two months, that the action taken by the respondent is legal, that an alternative remedy u/s 42(3) of the Act is available for the petitioners and hence it is open to the petitioners to avail the

appellate remedy and therefore the writ is not maintainable.

4. The question therefore is whether the notice issued by the respondent is consistent with the provisions u/s 42(1) r/w Section 41 of the Act. Section 41 of the Act postulates penalties against any person who constructs without approval or permission or sanction referred to u/s 13 or in contravention of any conditions subject to which permission, approval or sanction has been granted with liabilities. Section 42(1) of the Act provides powers for demolition of a building which reads thus:

"Where any development has been commenced or being carried on or has been completed in contravention of the Master Plan or Zonal Plan or without the permission, approval or sanction referred to in Section 13 or in contravention of any condition subject to which such permission, approval or sanction has been granted.

(i) xxxx

(ii) In relation to any other area within the local limits of a legal authority, the competent authority thereof, may in addition to any prosecution that may be instituted under this Act, make an order directing that such development shall be removed by demolition, failing or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period being not less than five days and not more than 15 days from the date on which a copy of the order of removal, with a brief statement of the reasons therefore, has been delivered to the owner of that person as may be specified in the order; and on his failure to comply with the order, the officer of the authority or as the case may be, the competent authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue,

xxxx "

A reading thereof clearly indicates that if the contravention is seen then a notice, calling upon giving not less than five days and not more than 15 days from the date on which a copy of the order of removal is made, with brief statement of reasons thereof has been delivered to the owner or the person they may be specified in the order and on his violation to comply with the order, the authority or the officer as the case may be has power to remove or cause to be removed the development and the expenses incurred can be recovered according to law. Before doing that the proviso enumerates that no such order shall be made unless the owner of the person concerned has been given reasonable opportunity to show cause why the order should not be made. Therefore, on the authority or the officer who intends to issue order of demolition Section 42(1) proviso mandates that no such order shall be made unless the owner or the person concerned has been given reasonable opportunity to show cause against the

proposed action. In this case, this is only the first show cause notice straight away issued for demolition within the period specified thereunder. The respondents have not placed any material before this Court of any prior notices issued to the petitioners for which the petitioners have not given any replies. But the contention has been raised in the counter-affidavit filed by the respondent that two notices were issued prior to the impugned notice and the same was not substantiated by producing records. Hence, I am constrained to draw an inference that had there been any notices prior to the impugned notice, they would have been produced before the court. The fact that they were not produced clearly shows that the notice impugned is the first notice issued to the petitioners without giving them any opportunity which is violative of provisions laid down u/s 42(1) of the Act. In the circumstances of the case appeal is not the remedy for the reason the original order is void and appeal does not cure validity.

5. The impugned order is accordingly quashed and the writ petitions are allowed. No costs. This order does not however preclude the respondents from taking any action according to law.