
(2003) 08 AP CK 0112

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9501 of 2003

Tarakarama Saw Mill

APPELLANT

Vs

Commissioner, Tenali Municipality

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 214, 264, 264(3)

Citation : (2003) 6 ALD 125 : (2004) 7 ALT 969

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Ravinder Babu, for the Appellant; D. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This writ petition is filed seeking a writ of mandamus declaring the action of the respondent in issuing the impugned endorsement dated 1.2.2003 in B.A. No. 531/2002/G.1 directing the petitioner to remove the AC sheet shed and saw mill as illegal and arbitrary and for appropriate consequential directions.

2. Though the interlocutory matters being WPMP No. 12107 of 2003 and WVMP No. 2580 of 2003 are listed before this Court, with the consent of the parties, the writ petition itself was heard and being disposed of.

3. It is the case of the petitioner that he obtained lease of 200 square yards of land with an intention to set up a saw-mill. He applied for building permission for construction of a shed for running a saw mill in industrial area. The said application made on 10.10.2001 was rejected on the ground that for construction of industrial shed minimum extent of land required is 450 square yards and therefore no construction is permissible on the land admeasuring 200 square yards. Therefore, the petitioner obtained lease in respect of 460 square yards of land and resubmitted the plan on 20.12.2002. According to the petitioner, he was not informed about the rejection of his application and therefore he raised a small shed with AC sheets. He received the impugned order/endorsement dated

1.2.2003 on 7.4.2003 whereunder he was directed to remove the shed with AC sheet roof. He was also advised to obtain a No Objection Certificate from the A.P. Pollution Control Board.

4. In the counter-affidavit accompanying the vacate stay application, it is stated that the petitioner resubmitted the plan for approval on 20.12.2002 after obtaining lease of the land admeasuring 468 square meters. In the meantime, a complaint was received against the petitioner from one Sambasiva Rao and the A.P. Pollution Control Board also issued a direction to stop the construction of saw mill by the petitioner. However, the petitioner commenced the construction of saw mill without obtaining permission as required u/s 264 of the A.P. Municipalities Act ("the Act" for brevity). The respondent issued a show-cause notice dated 4.12.2002 under Sections 42(1) and 43(1) of A.P. Urban Area (Development) Act, 1975 requiring the petitioner to submit an explanation within 5 days. The petitioner did not do so. Therefore, the petitioner was issued with the impugned notice dated 1.2.2003 requiring him to remove the unauthorised constructions. It is also alleged that the petitioner avoided service of the said notice till 7.4.2003. In the counter-affidavit it is also stated that the petitioner is not entitled to claim the benefit of Section 214 where under if the Commissioner fails to reject or sanction approval within the period prescribed under Sections 212 and 213 of the Act, it shall be deemed that such permission is granted as the petitioner's application was rejected before the expiry of 120 days allowed by the statute u/s 212 read with Section 213 of the Act.

5. The learned Counsel for the petitioner Sri Ch. Ravindra Babu submits that as per the provisions of Section 214 read with Section 213, the petitioner is entitled to commence construction if the Commissioner fails to reject the request for sanction of building plan within 60 days. The petitioner has waited for such time and commenced the construction. He also submits that as certified by the Commissioner the land is situated in industrial area and the petitioner obtained all permissions like licence from the Inspector of Factories etc., and therefore the impugned action is invalid.

6. Per contra, Sri D. Srinivas, submits that as a first step, the application for construction or reconstructing the building made u/s 209 of the Act has to be considered with reference to the provisions of Section 212 of the Act. After approving the building site, which can be within a period of 60 days, the Commissioner is given another 60 days time as per Section 213 of the Act either to sanction the building plan or to reject the building plan. Therefore, Section 212 swings into operation only after expiry of 120 days. A person who applies cannot assume that he got deemed permission after expiry of 60 days.

7. Sections 212, 213 and 214 of the Act read as under:

Section 212. Period within which Commissioner is to signify approval or disapproval :--Within sixty days after the receipt of any application made u/s 209 for approval of a site or of any information or further information required under

Rules or bye-laws, the Commissioner shall, by written order, either approve the site or refuse on one or more of the grounds mentioned in Section 215 to approve the site.

Section 213. Period within which Commissioner is to grant or refuse to grant permission to execute work :--Within sixty days after the receipt of any application made u/s 209 for permission to execute any work or of any information or of documents or further information or documents required under Rules or bye-laws, the Commissioner shall by written order either grant such permission or refuse on one or more of the grounds mentioned in Section 215 to grant it:

Provided that the said period of sixty days shall not begin to run until the site has been approved u/s 212.

Section 214: Effect of delay in grant or refusal of approval or permission :--If within the period prescribed by Section 212 or Section 213, as the case may be, the Commissioner has neither given nor refused its approval of a building, site or its permission to execute any work, as the case may be, such approval or permission shall be deemed to have been given; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any Rules or Bye-laws made under this Act.

8. When a person applies for a building permission, such permission shall be deemed to have been granted by the Commissioner if he fails to refuse such building permission within a period of 120 days. Therefore, a person has to necessarily wait for a period of 120 days. If any construction is made before the expiry of 120 days it would be ex facie illegal.

9. Section 264 is a special provision in the Municipalities Act under which every person intending to construct or establish a factory, a workshop or a work place in which steam or others is to be employed has to make an application to the Council seeking permission to undertake the construction. Under Sub-section (3) of Section 264 of the Act, it is for the Council after obtaining necessary approvals from the Inspector of Factories either to grant permission or refuse permission for the reasons mentioned therein. There is no provision for deemed permissions u/s 264 of the Act in relation to construction of industrial sheds and factory sheds.

10. Section 214 therefore cannot be read into Section 264. Further, even in regard to authority, which is vested with the power to sanction building plan, there is a justification. If it is construction of a building other than industrial area, factory shed, the application has to be made to the Commissioner u/s 209 whereas in the case of construction of factory sheds and industrial sheds such application has to be made and approved by the Municipal Council only. This is another reason as to why the Legislature has not provided for a deemed permission in relation to industrial and factory sheds. If such deemed permission is read into Section 264 that would cause prejudice to many persons. For

instance, an industrial shed is constructed allegedly under deemed permission u/s 214 (which has no application to industrial sheds) and the factory is commenced employing workers and employees and if ultimately those structures are removed, it would certainly cause prejudice to those workers and employees. In a given case even the industrial shed or factory shed may have to be constructed after obtaining loan from national banks and other financial institutions in which event it would be mockery of the provisions of the Municipalities Act to allow a person to construct an industrial shed under deemed permission. The intention of the Legislature is certainly not to allow construction of industrial and factory sheds under deemed permission.

11. Further, as seen from the counter-affidavit, one K. Sambasiva Rao made a complaint to the Collector. It appears, the same was looked into by the A.P. Pollution Control Board who directed the municipality to stop construction of the establishment of a saw mill. It is for this reason, the municipality advised the petitioner to obtain No Objection Certificate from the A.P. Pollution Control Board. If the petitioner desires to resubmit the building plans after obtaining all the necessary permissions required under Sub-section (4) of Section 264 if not already acquired and also No Objection Certificate from the A.P. Pollution Control Board. The same shall be considered in accordance with Section 264(3) of the Act in accordance with law. In this writ petition no relief can however be granted.

12. The writ petition for the above reasons fails and it is accordingly dismissed.