HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE FOURTEENTH DAY OF OCTOBER

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NO: 26719 OF 2022

Between:

1. Chinta John Sundar, S/o. Chinta Vidya Sagar,
   Aged 43 years, R/o. D. No. 50-50-26/9,
   Seethammadhara, TPT Colony, Visakhapatnam,
   Visakhapatnam Urban.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep. by its Secretary,
   Municipal Administration Department,
   Government of Andhra Pradesh.
   Secretariat Buildings, Velagapudi, Amaravati.
2. The Municipal Commissioner, Greater Visakhapatnam Municipal Corporation, Visakhapatnam, Visakhapatnam District.
3. The Town Planning Officer (TPO) Visakhapatnam City, Visakhapatnam, Visakhapatnam District.
4. Galla Swathi, W/o. Not Known,
   Aged above 40 years, R/ o. Susmitha Enclave, BS Layout Area,
   Visakhapatnam District.

...RESPONDENTS

Counsel for the Petitioner(s): NANI BABU ROBBA

Counsel for the Respondents: GP FOR MUNCIPAL ADMN URBAN DEV

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No.26719 of 2022

Between:

Chinta John Sundar

.....Petitioner

AND

The State of Andhra Pradesh, rep. by its Secretary, Municipal Administration Department, Secretariat, Amaravathi and others

.....Respondents

DATE OF JUDGMENT PRONOUNCED: **14.10.2022**

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

RAVI NATH TILHARI, J

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

+ WRIT PETITION No.26719 of 2022

% 14.10.2022

Chinta John Sundar

....Petitioners.

Versus

$ The State of Andhra Pradesh, rep. by its Secretary, Municipal Administration Department, Secretariat, Amaravathi and others

.....Respondents.

! Counsel for the Petitioner: Sri Nani Babu Robba

^ Counsel for the respondents 2 & 3
Sri Lakshmi Narayana Reddy,
S.C for respondents 2 and 3

< Gist :

> Head Note:

? Cases Referred:

1.(1988) 2 SCC 341
2.[1] (1997) 2 SCC 53
3. 1968 SCCOnLine AP 287
4. (2009) 10 SCC 32
5. 2004 SCC OnLine All 2129
6. 2010(2) U.P.L.J. 151 (HC)
7 AIR 1964 SC 358
8 LR 63 IA 372
9 (2004) 6 SCC 440
10.[1] (2002) 1 SCC 633
11 2009 SCC Online All 711

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.26719 OF 2022

JUDGMENT:-

Heard Sri Nani Babu Robba, learned counsel for the petitioner and Sri Lakshmi Narayana Reddy, learned standing counsel for respondent Nos.2 and 3.

2. With the consent of the parties counsels, the writ petition is being disposed of finally at this stage.

3. Issuance of notice to the unofficial respondent No.4 is dispensed with, as such respondent is considered not necessary to be heard for the decision of the writ petition.

4. The petitioner has filed the present writ petition under Article 226 of the Constitution of India for the following reliefs:

> "...it is therefore prayed that this Hon'ble Court pleased to issue an appropriate writ order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in interfering with the construction of residential house building in Sy. No. 4/2 admeasuring in a total extent of 157.5 Sq yds which is situated at Resapuvanipalem Village Visakhapatnam District and also trying to evict the petitioner from the above mentioned property as illegal arbitrary high handed ultra vires contrary to the procedure established by law and against to the principles of natural justice

apart from being violative of Article 300A of the Constitution of India and consequently direct the respondents not to evict the petitioner and not to interfere with the construction of residential house building in Sy.No.4/2 admeasuring in a total extent of 157.5 Sq.yds which is situated at Resapuvanipalem Village Visakhapatnam District in the interest of justice"

5. The learned counsel for the petitioner submitted that the petitioner is the absolute owner of the land in Sy.No.4/2 admeasuring in total 157.5 sq. yards situated at Resapuvanipalem Village, Visakhapatnam which was acquired by him from his father vide gift deed document No.1487 of 2020 dated 27.02.2020. The petitioner obtained building plan approval from the Greater Visakhapatnam Municipal Corporation (for short, "GVMC") vide building plan permit No.1086/2968/ B/Z2/ REM/2020 dated 30.10.2020 to construct the residential building in the premises D.No.50-50-26/9 of BS Layout Street, BS Layout Area, within the GVMC limits in the above mentioned property under the rules and regulations of the Andhra Pradesh Building Rules, 2017 in short the Rules, 2017. However, when the petitioner started the construction, the 3rd respondent and its authorities at the instance of the unofficial 4th respondent and some other

unknown persons got stopped the construction work without any reason and without issuing any notice. Against such action the petitioner approached the 2nd respondent the Municipal Commissioner by filing representation dated 12.08.2022 but without any response and hence this writ petition.

6. Learned counsel for the petitioner submitted that the GVMC and its authorities cannot interfere with the petitioner's construction being raised under the building plan permit without following due process of law.

7. Sri S. Lakshminarayana Reddy on 24.08.2022 stated on the basis of instructions, that a notice No.471/1086/ GVMC/UC/ 2022 dated 10.06.2022 under Sections 452(1) and 461 of the Municipal Corporation Act, 1965 (for short, "the Act, 1965") was issued to the petitioner and served on 12.07.2022. Copy of the said notice with endorsement of receiving, after providing copy thereof to the learned counsel for the petitioner was placed before this Court, to submit that the action of the Corporation was not without following due process of law. On the next date i.e 25.08.2022 he further submitted on the basis of instructions that the notice dated 10.06.2022 was served on 12.07.2022 on the petitioner's brother-in-law namely Sri P. Kumar Banerji who was taking care of the building constructions and was present

on the spot as he had informed that the petitioner was at United Kingdom (UK) at that time.

8. By order dated 25.08.2022 on which date the petitioner's father Sri Chinta Vidya Sagar was present pursuant to order dated 24.08.2022 whereby the petitioner was directed to appear, but as petitioner was leaving for U.K on 25.08.2022 the petitioner's father appeared. He was directed to file affidavit stating about the specified dates if on such dates the petitioner was present in India or not.

9. The petitioner's father has filed affidavit vide U.S.R.No.58879 of 2022 stating inter alia that the notice dated 10.06.2022 was not served to the petitioner as he was at U.K on 12.07.2022. He came to India on 27.07.2022 and after filing the writ petition he again went to U.K on 25.08.2022. The petitioner was not aware of the notice. Copy of the passport and air ticket of the petitioner have been annexed with the affidavit.

10. Affidavit has also been filed by the Ward Planning and Regulation Secretary in GVMC Zone-III, Visakhapatnam on behalf of the 2nd respondent, as was directed by the order dated 25.08.2022, stating therein that the notice of Section 452 dated 10.06.2022 was received by one Mr. P. Kumar Banerji on behalf of the petitioner who claimed to be the brother-in-law of the

petitioner. It is further stated by the deponent of the affidavit that he is the concerned officer in respect of the building and he had served the notice dated 10.06.2022 on Pelluri Kumar Banerji on 12.07.2022 who accepted the notice stating that he was looking after the construction of the building on behalf of the petitioner and the petitioner was not in India.

11. Learned counsel for the petitioner on instructions of the petitioner's father further submitted that the person Pelluri Kumar Banerji is not known to the petitioner or the petitioner's father and he is not the brother-in-law of the petitioner.

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

13. The points that require consideration and determination are as follows:

i) Whether the service of notice dated 10.06.2022 under Sections 452 & 461 of the Municipal Corporation Act, 1965 on 12.07.2022 on P. Kumar Banerji is sufficient service on the petitioner/owner?

ii) Whether the Municipal Corporation is proceeding against the petitioner in accordance with law?

14. It is undisputed that the notice dated 10.06.2022 served on 12.07.2022 was not served on the petitioner.

15. The specific case of the 2nd respondent is that the notice was served on Sri Pelluri Kumar Banerji representing himself as brother-in-law of the petitioner, which relationship is denied by the petitioner's father as also acquaintance with P.K. Banarji.

16. The court proceeds to consider as to how the service of a notice under Sections 452 & 461 of the Act, 1965 is to be effected under law and on what persons, to be due and sufficient service of notice.

17. Section 452 of the Municipal Corporation Act, 1955 reads 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 byelaws 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 an agent duly authorised 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 authorised 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."

18. Section 452 of the Act, 1965 provides for taking proceedings in respect of building or work commenced or carried out contrary to the provisions of the Act, 1965 or the bylaws made thereunder. Sub Section (1)(a) provides for issuance of written notice, requiring the person who is erecting or re-erecting the building or executing such work or erected or re-erected the building by executing the work commenced or carried out contrary to the provisions of the Act to show sufficient cause as to why such building or work shall not be removed, altered or pulled down or require such person to attend personally or by duly authorized agent to show sufficient cause as to why such building work shall not be removed or altered or pulled down.

19. Section 461 of the Act, 1955 reads 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 of 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. Thus, Section 452 of the Act, 1965 provides for issuance of written notice to the person concerned for the building or work to be removed, altered or pulled down. Section 461 of M.C. Act,

1965 also provides for issuance of written notice to the person concerned carrying on unlawful erection, re-erection or execution of work to stop the same.

21. Section 629 of the Act, 1965 provides that the notices, bills schedules, summons and other such documents required by the Act or by any Regulation or bye-law under the Act to be served upon or issued, or presented or given to any person, shall be served, issued or presented or given by the Municipal Officers or Servants or by other persons authorized by the Commissioner in this behalf.

22. The relevant provisions for service of notice, are Sections 630 and 631 of the Act, 1965.

23. Section 630 of the Act, 1965 provides for the manner, as to how the service is to be effected on any person. It reads as under:

> **"630. Service how to be effected on owners of premises and other persons:—** When any notice, bill, schedule, summons or other such documents is required by this Act, or by any regulation or byelaw made under this Act, to be served upon or issued or presented or given to any person such service, issue or presentation shall except in the cases otherwise expressly provided for in Section 657 be effected—
>
> (a) by giving or tendering to such person the said notice, bill, schedule, summons or other documents; or

(b) if such person is not found, by leaving the said notice, bill, schedule, summons or other document at his last known place of abode in the city or by giving or tendering the same to some adult male member or servant of his family; or

(c) if such person does not reside in the City, and his address elsewhere is known to the Commissioner by forwarding the said notice, bill, schedule, summons or other documents to him by post under cover bearing the said addresses; or

(d) if none of the means of aforesaid be available by causing the said notice, bill, schedule, summons or other document to be affixed on some conspicuous part of the building or land, if any, to which the same relates.

24. Section 657 of Act, 1965 provides for the remedy to the owner of the building or land against occupier who prevents him in complying the provisions of the Act, 1965, before the Judge, as defined under Section 2(27) of the Act which is not attracted in the facts of the present case.

25. Section 631 of the Act, 1965 provides for mode and manner of service on the owner or occupier of any building or land. It reads as under:

"**631. Service on owner or occupier of premises how to be effected:**— When any notice, bill, schedule, summons or other such document is required by this Act, or by any regulation or bye-law made under this Act, to be served upon or issued or presented to the **owner or occupier** of any building or land, it shall not be necessary to name the owner

or occupier therein and the service, issue or presentation thereof shall be effected, not in accordance with the provisions of the last preceding section but as follows, namely:—

(a) by giving or tendering the said notice, bill, schedule, summons or other document to the owner or occupier, or if there be more than one owner or occupier, to any one of the owners or occupiers of such building or land; or

(b) if the owner or occupier or no one of the owners or occupiers is found by giving or tendering the said notice, bill, schedule, summons or other document to some adult male member or servant of the family of the owner or occupier or of any one of the owners or occupiers; or

(c) if none of the means aforesaid be available by causing the said notice, bill, schedule, summons or other document to be affixed on some conspicuous part of the building or land to which the same relates."

26. The expression 'owner' is defined under Section 2(39) of the Act, 1965 as under:

"2. Definition:- In this Act unless there is anything repugnant in the subject or context:-

(39) 'owner' means,

(a) when used with reference to any premises, the person who receives, the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let and includes—

(i) an agent or trustee who receives such rent on account of the owner;

(ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any premises devoted to religious or charitable or educational purposes;

(iii) a receiver, sequestrator or manager appointed by any Court of competent jurisdiction to have the charge of or to exercise the rights of an owner of the said premises; and
(iv) a mortgagee-in-possession; and (b) when used with reference to any animal, vehicle or boat includes the person for the time being in charge of animal, vehicle or boat;

27. The expression 'occupier' is defined under Section 2(36) of the Act, 1965 as under:

"2. Definitions:— In this Act unless there is anything repugnant in the subject or context:-
(36) 'occupier' includes—
(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable.
(b) a rent-free tenant,
(c) licensee in occupation of land or building, and
(d) any person who is liable to pay to the owner damages for the use and occupation of any land or building;"

28. Section 630 of the Act provides for manner of service on any person, whereas Section 631 of the Act provides for manner of service on owner or occupier. Sections 452 and 461 of the Act provides for issuance of written notice to the person unlawfully erecting or re-erecting etc., as mentioned in the respective sections The notice No.471/1086/GVMC/UC 2022 dated 10.06.2022 under Section 452(1) & 461(1) is addressed to the petitioner. The petitioner is the owner and in his name the

building plan permit dated 30.10.2020 has been granted. The service of notice dated 10.06.2022 was, therefore required to be effected as per Section 631 of the Act, 1965. Even Section 630 of the Act, if taken to be applicable would make no difference, in the present case, in view of the fact that the Clauses (a),(b) & (d) of Section 630 are almost the same as Clauses (a),(b) and (c) respectively of Section 631. Clause (b) of both the sections permit service of notice on the adult male member of the family or the servant of the family of the person concerned under Section 630 and the owner or occupier as the case may be under Section 631. The common expression used is 'adult male member of the family', with which the court is concerned in the present case, it being the case of the Municipal Corporation that the notice was served on P. Kumar Banerji who represented himself as brother-in-law of the petitioner.

29. The expression 'family or member of the family' has not been defined under the Act, 1965.

30. In **State of Gujarat vs. Jat Laxmanji Talasji[1],** where the expression 'family' as used in Section 6(3B) of the Land Ceiling Act, 1960 was for consideration, but was not defined, the Hon'ble Apex Court held that the expression 'family' has not

[1] (1988) 2 SCC 341

been defined in the Act and therefore one has to go by the concept of family as it is commonly understood, taking into account the dictionary meaning of the expression.

31. It is apt to refer paras 2, 7 and part of para 8 of **State of Gujarat** (supra) as under:

> "2. The provision in question viz, Section 6(3B) is embodied in Chapter III of the Ceiling Act which bears the caption "Fixation of Ceiling on Holding Land, Determination of Surplus Land and Acquisition thereof". The concerned provision in so far as material to the problem posed by the present appeal deserves to be quoted:
>
> "6(3B) Where a family or a joint family consists of more than five members comprising a person and other members belonging to all or any of the following categories, namely:
>
> (i) minor son,
>
> (ii) widow of a pre-deceased son,
>
> (iii) minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead, such family shall be entitled to hold land in excess of the ceiling area to the extent of one- fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area; and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area:
>
> Provided x x x x x x"
>
> **7. This reasoning is obviously fallacious. The expression 'family' has not been defined in the Act. One has therefore to go by the concept of family as it is commonly understood, taking into account the dictionary meaning of the expression. Collins English Dictionary defines family as:**
>
> **"a primary social group consisting of parents and their offspring, the principal function of which is provision for its members."**
> **"a group of persons related by blood; a group descended from a common ancestor."**
> **"all the persons living together in one household."**

> 8. Having regard to this definition it can be safely concluded that the land-holder, his wife and his offspring consisting of three minor sons and three minor daughters would certainly constitute a family even if the mother of the land holder is excluded from consideration. Thus in any view the family of the land holder consisted of 8 members including himself, his wife, three minor sons and three minor daughters....."

32. In **K.V. Muthu vs. Angamuthu Ammal[2],** the point for consideration was whether a 'foster son' would be of a 'member of family' as defined under Section 2(6-A) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

33. It is apt to refer paragraphs 8 to 17 of **K.V. Muthu** as under:

> "8. Learned counsel for the appellant has contended that the "Family" has to be given the meaning which is commonly understood by an ordinary man and, therefore, "Family" would include only natural sons and not "Foster Son". Learned counsel for the respondent, of the contrary, con-tends that since the definition of "Family" as set out in the Act is an artificial definition, its natural or common meaning cannot be adopted. "Family", it is contended, is a. word of great flexibility and has to be interpreted in the context of the Act with the result that not only those who are related by blood or marriage, but others also would be included in it
>
> 9. Section 2(6A) provides as under :
>
> "2 (6-A), "member of his family" in relation to a landlord means his spouse, son, daughter, grand-child or dependent parent."
>
> 10. Apparently, it appears that the definition is conclusive as the word "means" has been used to specify the members, namely, spouse, son, daughter, grand-child or dependent parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, open with the words "in this Act, unless the context otherwise requires" which indicates that the definitions, as for example, that of "Family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the

[2] (1997) 2 SCC 53

light of the context and scheme of the Act as also the object for which the Act was made by the Legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, It should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the Section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.

13. This Court in K. Balakrishna Rao & Ors. v. Haji Abdulla Sait & Ors., [1980] 1 SCC 321 while considering the definition clause of this Act which is under our consideration, held :

> "A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires."

14. In its ordinary and primary sense, the term "Family" signifies the collective body of persons living in one house or under one head or manager or one domestic government. In its restricted sense, "Family" would include only parents and their children. It may include even grand-children and all the persons of the same blood living together. In its broader sense, it may include persons who are not connected by blood depending upon the context in which the word is used.

15. There is a consensus among the High Courts in India that the word "Family" is a word of great flexibility and is capable of different meanings.

16. In Ram Pershad Singh v. Mukand Lal, AIR (1952) Punjab 189, nephews who were brought up by the landlord and were set up in business by him and were also married by him, were held to be member of the family. The Calcutta High Court in Puspa Lata Debi v. Dinesh Chandra Das, 85 Cal. LJ. 74, in Syed Shah Maidal Islam & Ors, v, Commr. of Wakfs &0rs., AIR (1943) Cal. 635 and again in Sukumar Guha v. Naresh Chandra Ghosh

> & Aw., AIR (1968) Cal. 49; the Madras High Court in Asha Bibi & Ors. v. Nabissa Sahib & Ors., AIR (1957) Madras; the Bombay High Court in Mst. Ramubai v. Jiyaram Sharma, AIR (1964) Bombay 96; the Delhi High Court in Govind Das & Ors. v. Kuldip Singh, AIR (1971) Delhi 151 and again in Abdul Hamid & Anr. v. Nur Mohd.,AIR (1976) Delhi 328 have all held that the word "Family" is a flexible word and it may, in certain circumstances, specially in the context in which it is used, may include persons who are not directly related by blood.
>
> 17. This Court in Corporation of the City of Nagpur v. The Nagpur Handloom Cloth Market Co. Ltd., AIR (1963) SC 1192 while interpreting the word "Family" observed as under : "But the expression 'family' has according to the contest in which it occurs, a variable connotation. It does not in the setting of the rules postulate the existence of relationship either of blood or by marriage between the persons residing in the tenement Even a single person may be regarded as a family, and a master and servant would also be so regarded."

34. The expression ‘family’ is therefore a word of great flexibility and is capable of different meanings. It has a variable connotation according to the context in which it is used.

35. When an expression is defined under the Act or the Rules, the definition clause, starts, ordinarily it so starts; ‘unless the context otherwise requires’ or ‘unless there is anything repugnant in the subject or context’ or the like expressions. From the definition of an expression, it can be ascertained, if the definition is exhaustive or inclusive depending upon the use of the expression ‘means’ or includes’. Sometimes, both the expressions ‘means and

includes' are used. Then accordingly, the definition of such expression, is interpreted either restricting its meaning or expanding it, in the light of the object of the Act, the purpose it seeks to achieve and in the context of the legislation. If the context requires a different meaning, to give effect to the object of the legislation, different meaning may also be given, if the definition so permits by use of the expressions 'unless the context otherwise requires' or the like.

36. In the present case, the expression 'family' or 'member of the family' has not been defined. Therefore, in the absence of any such definition, it would be appropriate to consider the meaning of the family as it is commonly understood, in its ordinary and primary sense, taking into account the dictionary meaning of the expression, as held by the Hon'ble Apex Court in **State of Gujarat** (supra).

37. In **State of Gujarat** (supra), the 'family' as defined in Collins English Dictionary was relied upon, which definition is as under:

> "**a primary social group consisting of parents and their offspring, the principal function of which is provision for its members.**"

"a group of persons related by blood; a group descended from a common ancestor."
"all the persons living together in one household."

38. In **K.V. Muthu** (supra), the Hon'ble Apex Court held that the term 'family' in its ordinary and primary sense signifies the collective body of persons living in one house or under one head or manager or one domestic government. In its restricted sense family would include only parents and their children. It may include even grandchildren and all the persons of the same blood living together. In its broader service it may include persons who are not connected by blood depending upon the context in which the word is used.

39. From Sections 630(b) & 631(b) of the Act, 1965 'Member of the family' is qualified by the expression 'adult male', and consequently it restricts even the ordinary and primary meaning of the word family, only to its adult male members.

40. For the same reason, as aforesaid, the context in which the expression ' member of family' is used in Sections 630 & 631 to affect the service of notice etc., cannot be considered in its broader sense to include persons not connected by blood. It is to be considered in its restricted sense or ordinary and primary meaning but further restricted by the 'adult male'.

41. Thus, considered this Court is of the view that the expression 'family member' in Sections 630(b) and 631(b) of the Act, 1965 in the absence of definition of 'family' or 'member of family' would mean a) father b) son; c) the group of male persons related by blood, descended from a common ancestor e.g brother, grandson etc., and such persons living together in one household with the person, owner or occupier as the case may be to whom notice is issued.

42. The brother-in-law, not being related by blood or descended from a common ancestor, in the absence of definition of family, would not be a member of the family of the person, occupier or owner to whom the notice is issued under Sections 452 and 461 of the Act, 1965 and sought to be served as per Section 630(b) or 631(b) as the case may be

43. Service of notice required by Sections 452 and 461, on a female family member of the person, owner or occupier concerned, e.g mother, wife, sister, daughter, etc., would also not be due service of notice under Sections 630(b) and 631(b) of the Act, 1965 upon the person, owner or occupier as the case may be, because of the expression 'male member' of the family used in clause (b) of Sections 630 and 631 of the Act, 1965.

44. Learned counsel for the petitioner relied upon Rule 6 of Order XXXII-A of the Code of Civil Procedure, 1908 (in short C.P.C), for the definition of 'family' which reads as under:-

> "For the purposes of this Order, each of the following shall be treated as constituting a family, namely:-
>
> (a) (i) a man and his wife living together,
>
> (ii) any child or children, being issue or theirs; or of such man or such wife,
>
> (iii) any child or children being maintained by such man or wife;
>
> (b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;
>
> (c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;
>
> (d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and
>
> (e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.
>
> Explanation-For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in any other law for the time being in force.]"

45. Order XXXII-A CPC applies to suits or proceedings relating to matters concerning the family. Rule 6 defines 'family' for the purpose of Order XXXII-A CPC only. Explanation to Rule 6, declares for avoidance of doubts that the definition of family in Rule 6 shall be without prejudice to the concept of family in any

personal law or in any other law for the time being in force. The definition of 'family' as in Order XXXII-A Rule 6 CPC cannot be applied of its own to Sections 630 or 631 of the Act, 1965, and for the reasons as mentioned in the preceding paragraphs of this judgment, the 'females' cannot be the family members under Section 630(b) & 631(b) of the Act, 1965.

46. However, from Order XXXII-A Rule 6 CPC, one thing is clear that this definition also does not include the brother-in-law in the term 'family', but subject to the explanation.

47. In **Ganesh Commercial Corporation vs. State of Andhra Pradesh[3],** considering the definition of 'occupier' under Section 2(36), of the Act, 1965 this Court held that the 'owner' of the property does not come within the definition of 'occupier'. It is applicable to a tenant, a licensee or any person who is liable to pay to the owner damages for the use and occupation of any land or building.

48. Thus, considered this Court is of the considered view that

i) the notice was not served on the petitioner personally,

ii) service on P.K. Banerji is not service on the member of the family of the petitioner,

[3] 1968 SCCOnLine AP 287

iii) in view of the definition of 'occupier' under Section 2(36) and the law laid down in **Ganesh Commercial Corporation** (supra), the service of notice on P.K. Banerji cannot be said to be even on the 'occupier' of the land or the building, and

iv) undisputedly the notice was not sent to the petitioner by post under cover nor was affixed on some conspicuous part of the building or land to which it relates.

49. In the result, there was no service of notice dated 10.06.2022 on the petitioner by any of process, for effecting service under Sections 630 or/and 631 of the Act, 1965.

50. The service of notice on P.K. Banerji is no service even if he represented himself as brother-in-law of the petitioner.

51. Issuance of notice and its service on the person concerned is the first step to ensure compliance with the principles of natural justice of affording opportunity of hearing before taking any action against such person having the civil consequences.

52. In **Biecco Lawrie Limited and another vs. State of West Bengal and another[4],** the Hon'ble Apex Court held that it is fundamental to frame the procedure that both sides should be heard. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a

[4] (2009) 10 SCC 32

right to notice. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.

53. It is apt to refer paragraphs 17, 18 and 24 to 26 of **Biecco Lawrie Limited** (supra) as under:

> "17. Let us first delve into the most crucial question raised in this appeal, i.e. whether there was violation of principle of natural justice?
>
> 18. The principle of natural justice is attracted whenever a person suffers a civil consequence or a prejudice is caused to him by an administrative action. In other words principle of natural justice is attracted where there is some right which is likely to be affected by any act of the administration including a legitimate expectation. (See: Ashoka Smokeless Coal India (P) Ltd. v. Union of India & Ors.[(2007) 2 SCC 640] The procedure to be followed is not a matter of secondary importance and in the broadest sense natural justice simply indicates the sense of what is right and wrong (Voinet v. Barrett (1885) 55 LJQB 39) and even in its technical sense it is now often equated with fairness. As a well-defined concept, it comprises of two fundamental rules of fair procedure that- a man may not be a judge in his own cause (nemo judex in re sua) and that a man's defence must always be fairly heard".

> "24. It is fundamental to fair procedure that both sides should be heard - audi alteram partem, i.e., hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice, i.e., a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make

an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.

25. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following: (a) time, place and nature of hearing; (b) legal authority under which hearing is to be held; (c) statement of specific charges which a person has to meet.

26. However in The State of Karnataka & Anr. v. Mangalore University Non-Teaching Employee's Association & Ors. [(2002) 3 SCC 302] the requirement of notice will not be insisted upon as a mere technical formality when the party concerned clearly knows the case against him and is not thereby prejudiced in any manner in putting up an effective defence, then violation of the principle of natural justice cannot be insisted upon."

54. In **Commissioner of Income Tax vs. Shital Prasad Kharag Prasad[5], t**he Allahabad High Court held that the issue of a notice is a condition precedent to the validity of any assessment order to be passed under Section 147 of the Act, and if no such notice is issued or the notice is invalid or is not in accordance with law or is not served on the proper person in accordance with law, the assessment would be illegal and without jurisdiction.

55. It is apt to refer paragraph 12 of **Commissioner of Income Tax** (supra) as under:

[5] 2004 SCC OnLine All 2129

> **"12.** The Kerala High Court in *P.N. Sasi Kumar* v. *CIT*, [1988]170 ITR 80 has held that the issue of a notice under section 148 of the Income-tax Act, 1961, is a condition precedent to the validity of any assessment order to be passed under section 147 of the Act. It is also settled law that if no such notice is issued or if the notice is invalid or is not in accordance with law or **is not served on the proper person in accordance with law, the assessment would be illegal and without jurisdiction.** The notice should specify the correct assessment year and should be issued to a particular assessee. The notice issued to the assessee in that case did not specify the capacity in which it was issued to one S, whether as individual or as "principal officer" or as a member of an association or body of individuals. The assessment was completed by the Income-tax Officer in the status of an association of persons consisting of S and some others. It was held that before assessing an association of persons, the notice should be addressed to the "principal officer" or a "member" thereof as required by section 282(2)(c), which was not done. Such a fundamental infirmity, it was held, could not be called a "technical objection" or a mere irregularity, such a vital infirmity could not be cured or obliterated by placing reliance on section 292B."

56. In **Vancha Veera Reddy and another vs. The District Cooperative Officer, Nalgonda and others[6],** in the matter of disqualification of the elected President of Primary Agricultural Cooperative Society, with respect to the service of notice of removal, referring to Rule 24A of the A.P. Cooperative Societies Rules, 1964, in short "the Rules", which provided the manner of

[6] 2010(2) U.P.L.J. 151 (HC)

service of notice, the Hon'ble Division Bench of this Court held that the service of notice should have been made in the manner prescribed under Rule 24-A(2) and not contrary thereto. Rule 24-A of the Rules did not provide for service of notice by affixation or tendering or serving of notice on a member of the family. It was held by this Court that any resort taken to such manner being contrary to Rule 24-A, shall invalidate the notice. The manner of service of notice prescribed by the Rule was held to be mandatory like serving the notice in the prescribed proforma and dispatching the notice within the required time frame. It was further held that the service of notice in violation of rule 24-A of the Rules shall result in concluding absence of sufficient service of notice.

57. It is apt to refer paragraph 40 of **Vanchae Veera Reddy** (supra) as under:

> **"40. The manner of service of such notice, however, shall be only as prescribed by** Rule 24-A of the Rules **and any violation of** Rule 24-A of the Rules **in this regard shall result in concluding absence of sufficient service of notice.** Any resort to affixture of the notice or tendering or serving the notice on a member of the family of the member and the like will invalidate such notice as held in Gaddampalli Jagpal Reddy v. District Collector, Nalgonda (1 supra). **Therefore, non-compliance with the manner of service of notice as prescribed by** Rule 24-A of the Rules **also vitiates the notice** and consequently, the meeting

> and the proceedings thereunder as service of notice in the manner prescribed has also to be considered mandatory like serving the notice in the prescribed form and despatching the notice within the required time frame."

58. It is well settled in law that if a statute has conferred power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed.

59. It is apt to refer the judgment of the Hon'ble Apex Court in **State of U.P vs. Singhara Singh and others**[7]**,** para 7 and 8 and relevant part of para 12, which are extracted as under:

> "7. In Nazir Ahmed vs. King-Emperor[8] the Judicial Committee observed that the principle applied in Taylor v. Taylor(3) to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under s. 164 and, therefore, held that magistrate could not give oral evidence of the confession made to him which he had purported to record under s. 164 of the Code. It was said that otherwise all the precautions and safe- guards laid down in ss. 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves."

[7] AIR 1964 SC 358
[8] LR 63 IA 372

8. The rule adopted in **Taylor v. Taylor (**[1875] 1 Ch. D. 426, 431) is well recognised and is founded on sound principle. **Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of th act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted**. A magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in S.164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of S.164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on magistrates the power to record statements or confessions, by necessary implication, prohibited a magistrate from giving oral evidence of the statements or confessions made to him.

12. ".....We have to point out that the correctness of the decision of Nazir Ahmed's case(1) has been accepted by this Court in at least two cases, namely, Rao Shiv Bahadur Singh v. The State of Vindhya Pradesh ((1960) 2 ILR 488 and Deep Chand v. State of Rajasthan ((1875) 1 Ch.D.426, 431). We have found no reason to take a different view."

60. In **Captain Sube Singh and others vs. Lt. Governor of Delhi and others[9],** referring to the Constitution Bench judgment

[9] (2004) 6 SCC 440

in **CTI vs. Anjum M.H. Ghaswala[10],** the Hon'ble Apex Court, in para 29 observed and reiterated as under:

> **"29. In Anjum M.H. Ghaswala a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.** (See also in this connection Dhanajaya Reddy v. State of Karnataka (2001) 4 SCC 9). The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof."

61. In **Kotak Mahindra Bank Ltd. Through its Authorised Signatory vs. Debts Recovery Appellate Tribunal, Allahabad and others[11],** the Allahabad High Court reiterated that once the procedure has been prescribed by the State under the statute, the same is to be followed as it is settled that when a procedure has been prescribed in law then the authority has to proceed to adjudicate such a claim in that manner alone and no other.

62. Paragraph 8 of **Kotak Mahindra** (supra) is reproduced as under:

> **"8.** Having heard learned Counsel for the parties and having considered their submissions, it is more than evident that the statute prescribes a particular procedure to be

[10] (2002) 1 SCC 633
[11] 2009 SCC Online All 711

adopted for preferring an appeal against an order. Undisputedly, the State has under a presumption, that the decree is likely to effect the interest of the State, filed an appeal. The statute does not draw any distinction on the issue of liability or no liability arising out of a decree for the purposes of following the procedure prescribed for presenting an appeal. The appeal has to be presented in the manner in which it has been provided for, under the statute. It is settled right from ***Taylor* v. *Taylor***[1] **upto *Prof. Ramesh Chandra* v. *State of U.P.***[2] **that when a procedure has been prescribed in law then the authority has to proceed to adjudicate such a claim in that manner alone and no other. This is a fall out of the principle that once a procedure has been prescribed then the procedure therein is binding on the parties and the same can be waived only in terms of the provisions made under the statute.** From a perusal of the statutory provision, it is evident that the Tribunal was obliged to pass an order on the application moved by the State for waiving the condition of pre-deposit and also to consider the issue of limitation before proceeding to entertain the appeal on merits or the application for interim protection. The grant of interim order was, therefore, in the opinion of the Court, patently without jurisdiction without there being a competent appeal in terms of the statute. The Tribunal, being a creation under the Statute, therefore, could not have travelled beyond the provisions aforesaid."

63. It is well settled that service of notice is fundamental to fair hearing. The notice is to be served in accordance with the prescribed procedure and it should be served to the proper

person. If the notice is not served on the proper person or is contrary to the prescribed procedure that would be no service.

64. Another aspect which deserves mention is that from the copy of the notice dated 10.06.2020 alleged to be served on P.K. Banerji, it is evident that it does not contain his full name, his particulars or his relationship with the petitioner. The notice only contains the initials. There is also no endorsement by the notice server that the said person represented himself as brother-in-law of the petitioner.

65. The service of notice being fundamental to the opportunity of fair hearing, in the cases of no service or no due receiving of service, disputes arise. It, on the one hand causes hardship, inconvenience and prejudice to the person against whom the adverse order is passed and on the other hand it causes hardship to the Municipal Corporation as well, in taking appropriate steps to timely stop the unauthorised constructions or the removal thereof in discharge of statutory duty.

66. In view of the aforesaid, it is considered appropriate to issue the following directions for the service of the notice, under Sections 630 & 631 of Act, 1965.

i). The Commissioner of the Municipal Corporation shall ensure that the notice issued for taking action under the

provisions of the Act, 1965, shall be served on the person concerned, the owner or the occupier as the case may be as per the provisions of Sections 630 and 631 of the Act, 1965 respectively, except in the cases under Section 657 of the Act.

ii).The procedure as prescribed in respective clauses (a),(b),(c) and (d) of Section 630 and clauses (a)(b) & (c) of Section 631 of the Act, 1965 for effecting the service shall be followed in the order of that preference.

iii). If the service of notice cannot be effected as per clause (a), reasons in brief shall be recorded by the notice server for resorting to the next clause (b) and so on.

iv) Male member of the family in Sections 630(b) and 631 (b) of the Act, 1965, in the absence of any definition of 'family' or 'member of family' shall mean the following:

a) Father
b) Son
c) Grandson
d) Brother, and
e) Other male persons related by blood or descended from a common ancestor,

such person(s) living with the noticee in one house hold

v) If the person, the owner or occupier, to whom a notice is required to be served i.e noticee, is a female, the notice is to be served firstly on her personally, and if the clause (b) of Sections 630 or 631 is to be resorted, it is to be served on the 'adult male member of the family of such female'.

vi) In such a case as in clause-v, the 'male members of the family', shall, in addition to the family members as in clause (iv)

(supra), include, also, the husband and the family members of the husband, as in clause iv (supra), with the same condition of living together with the female noticee applying equally to all such persons.

vii) Such male member of the family shall be an adult i.e of the age of majority.

viii) Brother-in-law is not the member of the family under clause (b) of Sections 630 and 631 of the Act, 1965.

ix) service of notice on the female members of the family of the noticee e.g mother, wife, sister, daughter etc., even if adult and living in one house hold with the noticee, is not contemplated by Sections 630 and 631 Act, 1965. Consequently, service of notice should not be made upon them.

x) If no adult male member of the family as aforesaid is available for service, under Clause(b) of Sections 630 and 631 of the Act, 1965, the proper course would be to resort to clause (d) of Section 630 of the Act, 1965 or clause (c) of the Section 631 of the Act, 1965 by affixation on some conspicuous part of the building or the land to which the notice relates.

xi) The recourse can also be made to clause (c) of Section 630 of the Act, 1965, in the case of service of notice to a person if the conditions of clause (c) are satisfied, before resorting to clause(d) of Section 630 of the Act, 1965.

xii) the notice server shall ascertain the name, and age of the person to whom the notice is actually being delivered by making summary enquiry by asking his name, age etc. and in

case of service under clause (b) of Sections 630 & 631 of the Act, also his relationship with the noticee.

xiii) The notice server shall write down the name and age of the person to whom the notice is delivered, on the copy of the notice on which the acknowledgment of receiving of the notice is taken, and shall also make his signatures with his name and designation with date, in proof of service being affected by him.

xiv). If service is affected by affixation under clause (d) of Section 630 or clause (c) of Section 631 of the Act, 1965, the proof of affixation on the building or land to which the notice relates shall also be taken, as the circumstances may permit on the spot i.e by taking photograph or/and by a witness of such affixation with his due identity.

xv) The Municipal Corporation shall maintain the record of such receiving service of the notice

67. In the result, it is held that in the absence of service of the notice to the petitioner, any interference by the Municipal Corporation with the raising of the construction by the petitioner on his land after obtaining the building permission, is without following due process of law.

68. However, that i.e the above, does not mean that the petitioner is at liberty to raise the construction, in violation of the provisions of the Act, 1965; the rules and the regulations framed thereunder or contrary to the terms and condition of the building

plan permit. The petitioner is bound to adhere to the legal provisions and the terms and conditions of the building plan permit, in raising constructions.

69. On point No.1 it is held that the service of notice dated 10.06.2022 on P.K. Banerji is no service on the petitioner. On point No.2, it is held that the Municipal Corporation interfered without following due process of law.

70. The petitioner is at abroad in U.K. His father has knowledge of all these proceedings. A copy of the notice dated 10.06.2022 has also been received by him through the petitioner's counsel after filing of the writ petition.

71. Learned counsel for the petitioner submitted that the petitioner shall file reply to the notice dated 10.06.2022 before the 3rd respondent through the petitioner's father within a specified period as may be prescribed by this Court.

72. Accordingly, it is provided that the petitioner shall file reply to the notice dated 10.06.2022 before the 3rd respondent within a period of four weeks from the date of receipt of copy of this judgment. The 3rd respondent shall pass final orders within a period of one month from the date of receipt of reply along with copy of this judgment, in accordance with law, after affording opportunity of hearing to the petitioner or his father, as also the

4th respondent namely Galla Swathi, resident of Susmitha Enclave, BS Layout Area, Visakhapatnam.

73. Till such time the decision is taken by the 3rd respondent, the interim order dated 03.09.2022 directing the parties to maintain status quo, shall continue.

74. If the petitioner fails to file reply to the notice dated 10.06.2022 within the stipulated time, the 3rd respondent shall proceed further with the notice dated 10.06.2022, but, in accordance with law.

75. The writ petition is partly allowed with the aforesaid observations and directions.

76. Let a copy of this judgment be sent to the Principal Secretary, Municipal Administration and Urban Development Authority, for issuing necessary directions at his end to all the Municipal Corporations in the State of Andhra Pradesh as per paragraph No.66 of this judgment.

77. No order as to costs.

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

_____

RAVI NATH TILHARI, J

Date:14.10.2022

Note:

L.R copy to be marked.

Issue C.C in 3 days.

B/o.

Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.26719 OF 2022

Date:14.10.2022