HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.22222 of 2012

Date: 26-06-2015

Between:

Shaik Khadar Basha

.. Petitioner

AND

Kavali Municipality, represented by its
Commissioner, Kavali, SPSR Nellore District

.. Respondent

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.22222 of 2012

ORDER:

This writ petition is filed for a mandamus declaring the action of the respondent in proposing to demolish the cool drink shop of the petitioner i.e. Munna Cool Drink and Ice Creams, situated under Udaigiri bridge, Kavali Town, SPSR Nellore District as illegal and arbitrary and for a consequential direction to the respondent not to interfere with the business of the petitioner.

The case of the petitioner is that he started a petty business in the name and style of "Munna Cool Drink and Ice Creams" under Udayagiri flyover in Kavali Town in an extent of one ankanam in the year 1992 and along with him 40 other people also started petty businesses like flower shop, tiffin centres, pan shops, telephone booth, vegetable shop etc., in the said premises. The petitioner obtained trade licence from Kavali Municipality at the time of commencement of petty business and also electricity connection to the shop from the Electricity

Department and the said petty business is the only source of income for the petitioner and his family and he is paying municipal taxes to the respondent-Municipality and electricity regularly. While so, on 14-07-2012 and 17-07-2012 staff of the respondent-Municipality came to his shop and directed him to vacate the shop immediately failing which the shop would be demolished. The respondent is collecting necessary fee in form of tax from time to time and never raised any objection either against his shop or any other neighbouring shop. Now the respondent is threatening him alone to vacate the shop. Aggrieved by the same, the present writ petition is filed.

The respondent Municipality filed its counter-affidavit denying that nearly 40 people started petty businesses flower shop, pan shop, telephone shop, vegetable shop etc., under the Udayagiri Flyover bridge. The respondent-Corporation stated that the petitioner obtained temporary trade licence for running petty business purpose in the jurisdiction of the respondent Municipality and whenever on demand, he has to remove encroachment; that as there is a complaint from P. Muralidhar Reddy stating that the petitioner is causing obstruction for free flow of traffic from North Janathapeta to South Janathapet and also there is an objection from the nearby residents and also from the public, the petitioner was asked to shift the business from that place to another place; that the intention of the Municipality is not to close the petty business, but to provide access to the residents of the locality; that the petitioner has paid municipal tax for the temporary encroachment for the year 2011-2012 on a condition that whenever on demand by the Municipality, he has to remove encroachment and as the petitioner is causing inconvenience to the public, the temporary encroachment tax has not been collected from the petitioner for the year 2012-2013 and that the Municipality is having right to demolish/remove the objectionable encroachment under Sections 186 and 189 of the A.P. Municipalities Act, 1965; that the Railway station is located near the bridge i.e. within 100 meters distance and many people passing through the said road are expressing their inconvenience as the shop is amidst the road connecting the north Janathapet first line and south Janathapet first line; that the petitioner constructed a shop in between the public road despite the fact that hundreds of people pass through the public road day and night and the said shop has been causing very much inconvenience to the general public and that the respondent Corporation sought for dismissal of the writ petition.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent-Corporation.

In this case, admittedly, the petitioner is running business under flyover bridge, which is public path and it is not known as to how the respondent-Municipality permitted such encroachments and has been collecting encroachment tax. Mere collection of encroachment tax does not confer any right on the petitioner to continue his business on the public road causing obstruction to the public. Though the petitioner is running his business from 1999 on wards, the same may not be a ground to allow him to continue his business further causing inconvenience to the public. In the counter, it is stated that as there was a complaint from the public about obstruction for free flow of traffic due to running of business of the petitioner, he was asked to shift his business so as to avoid inconvenience to the public, but the petitioner did not shift his business, as result thereof, the respondent Corporation initiated the proposed action. It is true that roads are meant for general public and for free follow of traffic, but not running the business causing obstruction to the public. It is needless to state that whenever there are encroachments on the public road causing obstruction to general public and the vehicular traffic, it is the bounden of the respondent-Municipality to clear such encroachments in case the same obstructs public. Any way, the petitioner has not shown any right for continuance of his business on the public road in which case no writ of mandamus can be issued for continuance of his business on the public road in the absence of any legal right. Therefore, this Court is not inclined to exercise its extraordinary jurisdiction vested under Article 226 of the Constitution of India, and thus, the writ petition is devoid of merit and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

A. RAJASHEKER REDDY, J

Date: 26-06-2015

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