

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.2348 OF 2015

ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development appearing on behalf of respondent No.1 and learned Standing Counsel for GVMC.

The case of the petitioners is that they are running small units of Engineering Workshops in Survey No.50/1 of Thokada Autonagar, Visakhapatnam in their respective premises at D.No.5-28-49/4/1, 5-28-49/4, 5-28-49/4/2, 5-28-49/3 and 5-28-49/2/1 and that their work shops are 20 meters away from APIIC Industrial Area. The 2nd respondent has been collecting non residential tax and that the 3rd respondent transmitting power to their units. The petitioners also submitted that their units are surrounded by industries in three corners and they are situated far away from residential zone. Whereas, the 2nd respondent served notices on 27.01.2015 vide proceedings in Rc.No.16/2015/ACP-V/G1 under Section 441 of the HMC Act asking them to bring down the usage of building premises for residential purpose by closing the industrial activity as they are carrying out their activity in residential zone covered by Survey No.50/1, 50/2, 51/1 and 51/2 of Tokada Village. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioners submitted that the said notice is without jurisdiction, as action can be initiated only under Section 42 of the A.P. Urban Areas Development Act, 1975 and that the same is in violation of principles of natural justice and that the same is not preceded by any prior notice. He also submitted that the provisions of Section 441 of the HMC Act have no application to the facts of the case on hand.

On the other hand, learned Standing Counsel for Respondent Corporation submitted that since the petitioners' shops are located in the

residential area and that as the locality people complained the same, the present notice is issued and that the authorities are empowered to issue such notices by virtue of Sections 441, 442 and 443 of the HMC Act.

The impugned notice reads that the petitioners are carrying out their activity in residential zone covered by Survey Nos.50/1, 50/2, 51/1 and 51/2 of Tokada Village and they have un-authorizedly converted the usage of the building from residential to commercial/industrial. In the entire affidavit, they have not stated that they have obtained permission for use the premises, which they are occupying, for commercial purpose, nor it is their case that even though it is a residential zone in which the petitioners are located, the respondent authorities have issued impugned notice. In fact, in the writ affidavit, they only stated that their units are non polluting units and as such sought for dropping the proceedings and no where in the writ affidavit they stated that they obtained permission to run their activities in the residential houses meant for human habitation as per Section 442 or 443 of the Act. Since the petitioners have not disputed in their writ affidavit that they are not carrying on commercial activities in the residential zone, they cannot complain that the action of the 2nd respondent is arbitrary or illegal. As far as jurisdictional aspect is concerned, just because the jurisdiction is conferred under Section 42 of the Andhra Pradesh Urban Areas (Development) Act, 1975 on some other authority, it cannot oust the jurisdiction of respondent authority from exercising its power conferred on it under Sections 441, 442 and 443 of HMC Act. Sections 441, 442 and 443 of the HMC Act read as follows:

441. Building not be converted to other purposes without the permission of the Commissioner:- No person shall, without the written permission of the Commissioner-
- (a) use or permit to be used for human habitation any part of a building not originally constructed or authorised to be used for that purpose; or
 - (b) convert into, or use, or permit to be used, as a chawl or

building intended to form a range or separate rooms for lodgers, a building not originally designed or authorised to be so used.

442. Buildings of human habitation not to be used as godown, etc.-
No person shall without written permission of the Commissioner or otherwise than in conformity with the terms of such permission use or permit to be used any building or any part of a building originally constructed, or authorised to be used for human habitation as a godown, warehouse, workplace, factory, stable or a motor garage.

443. No alterations to be made in buildings for human habitation without written permission of Commissioner:-

No person shall without the written permission of the Commissioner or otherwise than in conformity with the terms of such permission make any alteration or cause any alteration to be made in an existing building originally constructed or authorised to be used for human habitation for the purpose of using it or causing it to be used as a godown, warehouse, workshop, workplace, factory, stable or motor garage.

A reading of Section 442 and 443 of the Act clearly indicates that the petitioners cannot use the premises, which is meant for human habitation as a godown, warehouse, workplace, factory, stable or a motor garage. Section 442 and 443 of the Act are applicable in the present case. Even if wrong provision of law is mentioned that does not take away the jurisdiction of authority when such power is conferred under the statute. The understanding of Sections 441, 442 and 443 of the HMC Act by the petitioners is misconceived. The action initiated by the respondent corporation is absolutely in accordance with law. When such is the case, question of violation of principles of natural justice does not arise. Principles of natural justice cannot be in a straight jacket formula. Petitioners themselves admitted that they are carrying commercial activity and when that is the case issuance of further notice may not arise and no prejudice is caused. Exercise of extra-ordinary writ jurisdiction is discretionary and equitable. In view of the above facts

and circumstances, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

Under the aforesaid reasons, the writ petition is misconceived and is accordingly dismissed with costs of Rs.5,000/-.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

A.RAJASHEKER REDDY, J

06.02.2015

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