

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.21530 of 2015

Between:

B.Mahaboob Doula, s/o. B.Nabi Saheb, Aged about 56 years,
Occu: Vegetable Wholesale shop, near Bus Stand Road,
Gooty, Anantapur District and another.

.. Petitioners

AND

The State of A.P., rep.by its Principal Secretary, Municipal
Administration and Urban Development Authority, Secretariat,
Hyderabad and another.

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 06.08.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : Yes / No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked: Yes / No
to Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : Yes / No
Copy of the Judgment ? :

**HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION No.21530 of 2015**

ORDER:

Petitioners claim to be carrying on business of sale of vegetables on wholesale basis and chicken centre respectively in the land belonging to the respondent municipality. What is challenged in the writ petition is the notices dated 22.06.2015 and 29.06.2015 directing the petitioners to vacate the subject premises within a period of seven days informing them further that failing to vacate voluntarily further action would be taken.

2. Learned counsel for the petitioners submits that the above notices were issued contrary to law. The subject land does not belong to respondent municipality. Even if the petitioners are in unauthorized occupation of the property belonging to the municipality, procedure as envisaged under Section 194 of the A.P.Municipality Act, has to be followed. Section 194 of the Act envisages detailed procedure and granting of sufficient time and second opportunity of hearing, whereas straightaway orders are passed asking the petitioners to vacate the premises within a period of one week. Thus, the said action of the respondent municipality is *ex facie* illegal.

3. Learned standing counsel submits that *prima facie* reading of documents shows that petitioners are in occupation of the property belonging to municipality. No lease amount is paid all along. He submits, on instructions that, municipality is contemplating to provide accommodation in the commercial complex proposed to be constructed in the same place and for that purpose, petitioners have to make an application and if such application is made, the same shall be considered positively.

4. Though petitioners claim that the land does not belong to the respondent municipality, the documents filed as material papers along with the writ petition and additional material papers filed disclose that the licence fee and occupation fee is being paid to the municipality only.

5. On reading of Section 194 of the Act, it makes clear that even in case of unauthorized occupation, detailed procedure as envisaged should be followed before evicting the occupant from the subject premises. In the first instance, there must be a notice granting thirty days time for eviction of the premises and if the premises is not vacated as directed, further notice should be given with sufficient opportunity for explanation and then only action shall be taken. In violation of the said provision, the impugned notices were issued, which prescribes one week time only. Impugned notice proceeds as if action is taken in accordance with the provisions contained in Sections 192, 193 and 194 of the Act. In the instant case only the provision in Section 194 of the Act would apply. Thus, impugned notices are contrary to the mandate of the Act and, therefore, said notices are not sustainable.

6. Learned standing counsel, on instructions, submits that after the issue of above notices, the properties of the petitioners were demolished and possession was taken, which contention is denied by the counsel for the petitioners.

7. Be that as it may, having found that notices issued on 22.06.2015 and 29.06.2015 are not valid in law, the same are liable to be set aside and it is accordingly set aside and matter is remitted to the respondent municipality to follow strictly procedure as envisaged in Section 194 of the Act to evict the petitioners from the subject premises. However, if petitioners were already dispossessed as claimed by standing counsel, they cannot be put back in possession at this stage. Thus, till such orders are passed, petitioners as well as respondents shall maintain *status quo* obtaining as on today.

However, it is open to the petitioners to make applications for seeking allocation of shops in the proposed shopping complex and as and when such applications are made for allotment of commercial spaces in the proposed commercial building complex, the same shall be considered in accordance with the procedure envisaged.

8. Accordingly, the writ petition is disposed of. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

Date : 06.08.2015
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JUSTICE P.NAVEEN RAO

HON'BLE SRI JUSTICE P.NAVEEN RAO

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