

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.21256 of 2015

Date: 14.07.2015

Between:

Shri Bontha Veera Venkata Srihari Rao,
S/o. Satyanarayana, Aged 43 years,
Occu: 4th Division Corporation, Municipal
Corporation, Rajahmundry, East Godavari Dist.

.. Petitioner

AND

State of Andhra Pradesh, rep.by Secretary,
Municipal Administration, Secretariat Building
Saifabad, Hyderabad and others.

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.21256 of 2015

ORDER:

This writ petition is filed praying to grant the following reliefs:

To issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in violating the conditions laid down in the judgement of a Division Bench of this Court in WP No. 28447 of 2008, dated 01.06.2015 and violating the resolution passed by the Council of Rajahmundry Municipal Corporation vide No.12/821/2015, dated 25.05.2015 as endorsed by the Secretary, Rajahmundry Municipal Corporation vide R.O.C.No. Secretary Division/2015-C2, dated 08.06.2015 as illegal, arbitrary, capricious, violation of fundamental rights and consequentially direct the respondents to strictly adhere to the resolution passed by the Council of Rajahmundry Municipal Corporation vide No.12/821/2015, dated 25.05.2015 as endorsed by the Secretary Rajahmundry Municipal Corporation vide R.O.C.No.Secretary Division/2015-C2, dated 08.06.2015 and not to permit any structure or platform for erection of statue of any writer, director or actor in between Havelock bridge and new railway bridge at Pushkar Ghat.

2. Petitioner claims to be a Corporator in Rajahmundry Municipal Corporation (2nd respondent). According to the petitioner, the Council of municipal corporation passed resolution on 25.05.2015 proposing to erect statues of leading film personalities including former Chief Minister and Actor late N.T.Rama Rao in Gouthami Nandanam Park. Contrary to the said resolution, Government is making arrangements to construct a platform in between Gavelock Bridge and new Railway Bridge at Pushkar Ghat to erect huge bronze status of late N.T.Rama Rao. Petitioner contends that respondents, i.e., the State of Andhra Pradesh, Municipal Corporation, District Collector and Superintendent of Police, have no power or right to go beyond the resolution passed by the Council of municipal corporation.

3. Heard learned counsel for the petitioner and learned Additional Advocate General for the respondents.

4. Learned counsel for the petitioner contends that in accordance with the resolution passed by the Council of municipal corporation, statue of late N.T.Rama Rao can be erected only in Gowthami Nandanam Park and cannot be erected at the place now proposed. He submits that in accordance with the orders of the Supreme Court, orders of this Court in W.P.No.28447 of 2008 dated 01.06.2014 and orders of the Government in G.O.Ms.No.18, Transport, Roads and Buildings (Roads-I) Department, dated 18.02.2013, it is not permissible to erect statues in public roads, highways or even on public paths. In blatant violation of the above orders, the decision to erect at Pushkar Ghat is taken. Learned counsel further contends that the place where the statue is proposed for erection is a 'public place' as defined in Section 2(44) and 'public street' as

defined in Section 2(46) of the Greater Hyderabad Municipal Corporation Act. Thus, in accordance with the Government decision in G.O.Ms.No.18, dated 18.02.2013, the statue at the place now proposed cannot be erected. He, therefore, sought for appropriate directions not to erect statue. Learned counsel filed additional material papers enclosing photographs taken from the scene to show that the statue proposed for erection is in a public place and contrary to the undertaking given before this Court by the learned Advocate General on the last date of hearing, the construction is in progress at a brisk pace. He has extensively referred to the orders of this Court in W.P.No.28447 of 2008 and the orders of the Supreme Court and G.O.Ms.No.18 dated 18.12.2013.

5. Learned Additional Advocate General raised preliminary objection on the maintainability of the writ petition. He contends that petitioner is a Councillor and the prayer sought by the petitioner is nothing but enforcement of resolution passed by the council. Such a prayer cannot be granted in a writ petition. He further submits that the Corporation adheres to its resolution; it has not taken a decision to change the location of installation of statue from Gowthami Nandanam Park to the present place. He further submits that there is no personal grievance of the petitioner. No right of the petitioner as councillor is infringed by State action. State is not erecting the statue. What is sought in the writ petition is nothing but espousing the cause of public and writ petition is not maintainable to espouse the cause of public.

6. He further contends that concerning the same issue of installation of statue, earlier Rastriya Praja Congress (Secular) filed W.P.No.16488 of 2015. The said writ petition was dismissed as withdrawn with liberty to pursue proper remedies as warranted by law since the issue of maintainability of writ petition was doubted. Accordingly, P.I.L.No.139 of 2015 is instituted. The said PIL was dismissed by order dated 22.06.2015. He, therefore, contends that on the same subject matter, this writ petition is not maintainable and if the petitioner intend to project the issue of installation of statue as public interest, he must institute PIL and not a writ petition.

7. In reply to the above objection, learned counsel for the petitioner contends that the place where the statue is proposed for erection is a public place and is on public street. Petitioner being a public servant, he is entitled to espouse the cause as agitated in the writ petition. He is entitled to seek enforcement of resolution passed by the Municipal council. He further submits that the orders passed by the Division Bench in P.I.L.No.139 of 2015 cannot come in the way of consideration of the writ petition in the present form.

8. As noticed from the record of W.P.No.16488 of 2015 and PIL No.139 of 2015, erection of statute of late N.T.Rama Rao at the Pushkar Ghat, was the subject matter of those two petitions. Only difference between the said petitions and the present writ petition is that petitioner therein was objecting to erection of statue on the ground that the

statue was reflecting N.T.Rama Rao as Lord Krishna and, therefore, it was not valid. In the present case, petitioner is opposing erection of statue on the ground that it is contrary to the resolution passed by the council of municipal corporation and erection of statue at the said place is contrary to the policy of the Government and the orders passed by the Supreme Court and this Court in the cases referred to above. However, in W.P.No.16488 of 2015 this Court already taken a view that the subject matter of writ petition is amounting to espousing the cause of public as against individual grievance and that the said writ petition was not maintainable. Having regard to the same, the petitioner therein withdrew the writ petition with liberty to avail appropriate remedy. Accordingly, petitioner therein filed P.I.L.No.139 of 2015. In the present case also, though the petitioner claims to be a Councillor and that he is seeking enforcement of the resolution passed by the council of respondent corporation, the consequential relief sought is nothing but espousing the cause of public at large. Petitioner has not suffered injury to his person. His personal rights are not affected by locating the statue at a particular place.

9. As a Councillor he may be projecting the interest of larger public but grievance *per se* is not offending his personal rights. The learned Additional Advocate General asserts that there is no change in the resolution passed by the Council of the respondent corporation and the respondent corporation is not erecting the statue at the present place. The said statement answers the primary grievance of petitioner as a Councillor. Any other prayer is in larger public interest.

10. Having regard to the view expressed by this Court in W.P.No.16488 of 2015 concerning the same subject matter and in view of the statement of learned Additional Advocate General categorically that the municipal corporation is not erecting the statue at the present place and that there is no change in the resolution passed by the Council of municipal corporation so far, there is no subsisting grievance for the petitioner as a person aggrieved by any such decision of the municipal corporation and consequential reliefs sought by the petitioner is only in the realm of public interest the writ petition is not maintainable. Any person espousing the larger public interest as against individual interest has to approach this Court in the form of public interest litigation and such matters can be considered only by the Division Bench. Thus, the writ petition is dismissed. In view of dismissal of writ petition as not maintainable all other issues are left open. It is open to petitioner to work out his remedies as available in law.

Miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date : 14.07.2015
kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No. 21256 of 2015

Date:14.07.2015

kkm