

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.22395 of 2009

ORDER:

In the present writ petition, challenge is to the notice bearing Rc.No.988/2009-F1 dated 09.09.2009, issued by the first respondent/Municipal Commissioner.

2. By virtue of the impugned notice, the first respondent herein directed the petitioner herein to remove the sweet house of the petitioner from Lakshminagar to the outskirts.

3. Heard Sri K.Srinivas, learned counsel for the petitioner and Sri Mohd Saleem, learned Standing Counsel for the second respondent and Sri S.D.Gowd, learned counsel for the respondents 3 to 13.

4. According to the petitioner, he is running business in the name and style of Jai Hanuman Sweet House at Lakshminagar, Anantapur, having obtained the license bearing No.102 dated 28.01.2009 from the Municipal Health Officer of the first respondent Municipal Corporation. As per the petitioner herein, he is carrying on the business strictly in accordance with law and his business is neither dangerous nor he is causing any nuisance to the public. The sum and substance of the grievance of the petitioner in the present writ petition is that the first respondent Municipal Commissioner without affording any opportunity to the petitioner, issued the impugned notice dated 09.09.2009 asking the petitioner herein to relocate the shop. It is also the case of the petitioner herein that he submitted a representation to the second respondent on 12.09.2009 along with the signatures of his neighbours.

5. This Court, on 20.10.2009, issued *Rule Nisi* and granted interim suspension of the impugned notice and further directed that the petitioner herein should ensure that no violation or disturbance is caused to the persons in the neighbouring locality.

6. No counter affidavit has been filed by the first respondent Municipal Corporation either in the direction of denying the averments made in the affidavit filed in support of the writ petition or in the direction of justifying the impugned action.

7. A counter is filed by the respondents 3 to 13 herein denying the averments in the writ affidavit and praying for dismissal of the writ petition. It is stated in the said

counter of the respondents 3 to 13 that the establishment of the petitioner is ejecting pollution and causing ill-health to the surrounding people of the colony.

8. In the present case, there is absolutely no evidence on record to show that prior to issuing the impugned notice dated 09.09.2009, opportunity was afforded to the petitioner. It is a settled law that any action of the authorities which has civil consequences, must necessarily be preceded by a notice and opportunity of being heard to the persons likely to be effected by such action. In the present case, the same is conspicuously absent. Therefore, the impugned action which culminated in issuing notice bearing Rc.No.988/2009-F1 dated 09.09.2009 is a patent violation of the principles of natural justice.

9. For the aforesaid reasons and taking into consideration the totality of the circumstances, writ petition is disposed of, permitting the petitioner herein to submit an explanation by treating the impugned notice dated 09.09.2009 as a show-cause notice, within a period of one month from the date of receipt of the order, and if any such explanation is submitted within the time stipulated, the same be considered by the first respondent herein and appropriate orders may be passed, as per law, after giving notice and opportunity of being heard to all the stake holders, including the writ petitioner and the unofficial respondents herein, within a period of two months thereafter. Till such exercise attains finality, *status quo* obtaining as on today shall be maintained. As a sequel, pending miscellaneous petitions, if any, stand closed. No order as to costs.

A.V.SESHA SAI, J

Date:17.04.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Between:

N.Ranga Swamy s/o N.Rangaiah Setty,
Hindu, aged about 45 years, Jai Hanuman
Sweet & Mixture Manufacturer, R/o Door No.
6-1-556, Lakshminagar, Anantapur, Town, Anantapur District.

... Petitioner

and

The Municipal Commissioner,
Anantapur Municipal Corporation,
Anantapur, Anantapur District and another.

... Respondents

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