

THE HON'BLE SRI JUSTICE P NAVEEN RAO

W.P.No.31463 OF 2015

Date: 24.09.2015

Between :

Sunil Kumar, S/o. Dr. C.P.Gupta, Aged 48 years,
Occu: Business, r/o. 8-2-293/A/PP/15, Jubilee Hills,
Hyderabad.

..... Petitioner

And

The State of Telangana, rep. by its Principal Secretary,
Municipal Administration Department, Telangana
Secretariat, Hyderabad and others.

..... Respondents

This Court made the following:

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ORAL ORDER:

Heard Sri M.Rajender Reddy, learned counsel for the petitioner and learned Government Pleader for respondent no.1 and Sri P.Kesava Rao, standing counsel for respondents 2 and 3 and with the consent of both counsels, this writ petition is disposed of finally at the admission stage.

2. This is one of the series of writ petitions instituted by the petitioner against Greater Hyderabad Municipal Corporation (for short, GHMC). Petitioner is lease holder of land belonging to the Jubilee Hills Cooperative House Building Society Limited- 4th respondent herein situated on road No.1 of Jubilee Hills for establishment of Petroleum retail outlet. Regarding the extent of land given on lease, there was a dispute and petitioner instituted O.S.No.2924 of 1989 on the file of the II Assistant Judge, City Civil Court, Hyderabad. In terms of the decree passed therein, petitioner is vested with possession of the land to an extent of 1571 square yards. Alleging that petitioner is in illegal occupation of the land, which is originally declared as 'Open Land', notice was issued on 23.9.2015 under Section 406 of GHMC Act directing the petitioner to vacate the premises to that extent within 24 hours. This writ petition is moved by way of special mention (House motion) on the ground that only 24 hours time is granted to vacate the premises without giving any opportunity.

3. Apart from several other contentions, learned counsel for petitioner also contended that impugned notice is nothing but an order

to vacate the premises and is not preceded by show cause notice and opportunity of hearing was not afforded.

4. According to learned standing counsel to GHMC, land to an extent of 460.68 square yards abutting Road No.1 of Jubilee Hills was declared as open space in the approved lay out of the 4th respondent society and the said open space vests in GHMC, whereas illegally petitioner is in occupation of the same. Records are brought. Based on the records it is contended by learned standing counsel that the land is described as 'Open Land' and is abutting the Road No.1, which is now in occupation of the petitioner.

5. W.P.No.20083 of 2014 was filed apprehending dispossession from the subject land without following due process. The said writ petition was disposed of by order dated 7.9.2015 directing GHMC to take action in reclaiming possession of the land to an extent of 460.68 square yards by following due process of law.

6. In view of the history of the litigation and stand of the petitioner vis-a-vis respondents, respondent GHMC ought to have granted opportunity of hearing before passing final orders dated 23.9.2015 directing petitioner to vacate the premises within 24 hours which is in possession of the petitioner for more than 20 years is arbitrary and discriminatory.

7. Section 406 of GHMC Act vests extraordinary power in GHMC to take possession and to remove illegal constructions made on property belonging to it. Even if provision is silent, it must be inferred that such penal action must be preceded by an opportunity of hearing as it involves dispossession and taking penal action against alleged illegal possession. However, it does not mean full gamut of procedural safeguards, but elementary principle of opportunity of hearing, that is putting the occupier with prior notice and affording opportunity to

present his version against such allegation. Since consequences of such penal action are adverse to occupier, such a procedure is mandatorily be followed and should be read into the provision. Moreover, in W.P.No.20083 of 2014, this Court observed to follow the procedure of law, but no procedure is followed.

8. Having regard to the earlier orders of this Court and in view of the long litigation, I deem it appropriate to dispose of the writ petition as under:

The petitioner shall submit his detailed explanation immediately, at any rate, one day before the date of personal hearing. The personal hearing shall be conducted by the second respondent Commissioner at 3.30 p.m. on 30.09.2015. The petitioner is entitled to be represented by his counsel and thereafter appropriate orders as warranted under law shall be passed by assigning due reasons. Till such final orders are passed and copy of such order is furnished to the petitioner, no coercive steps shall be taken.

Further, as noticed from the previous litigation, the petitioner is only a lease holder and the 4th respondent society is also necessary party. The Chief City Planner, GHMC, shall serve notice on the 4th respondent on the action proposed and regarding personal hearing to be conducted on 30.9.2015, on which date 4th respondent society represented by its authorized person is entitled to appear and make its submissions. No costs.

In view of the disposal of the writ petition, miscellaneous petitions, if any, pending shall also stand closed.

P.NAVEEN RAO, J

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Jsu/Tvk

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