

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION No.11116 of 2015

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ORDER:

This writ petition is filed for issuance of Mandamus declaring the notice issued by the 2nd respondent in Roc.No.468/2008/G1 dated 09.04.2015 as unjust, arbitrary, illegal and violation of principles of natural justice and consequently to direct respondents to provide alternative site to the petitioner-Association within the area of Kandukur town, as proposed by the 2nd respondent.

2. The case of the petitioner-Skandapuri Lorry Owners Association is that as the lorry stand at Z.P.High School, Kandukur, was being caused inconvenience to the students and general public, it made a representation to the 4th respondent-Tahsildar, Kandukur, for allotting site at Gundamkata. The 4th respondent passed an order dated 16.11.1992 to shift the lorry stand to Gundamkatta, which is a Government land. Later, the petitioner sought alienation of the land in Sy.No.865/1A, 1A, 2A1 in an extent of Ac.1.30 cents at Gudamkatta, as per market value decided by the Government. The 2nd respondent-Kandukur Municipality passed a resolution dated 28.02.1997 stating that an extent of Ac.0.68 cents is allotted to the petitioner and in the remaining land it is proposed to construct a shopping complex. The petitioner made a representation dated 20.01.2007 to the Mandal Revenue Officer and 4th respondent, seeking to alienate the said land of Ac.0.68 cents but no action has been taken. The 2nd respondent-Kandukur Municipality passed another resolution dated 24.06.2008 cancelling the site allotted to lorry stand at Gundamkatta and requested Revenue Department to allot site at some other place. Hence, the petitioner filed W.P.No.18793 of 2008 seeking declaration of the said resolution as unjust and illegal and the same was dismissed on 10.11.2014 with an observation that the said site is in enjoyment of the petitioner and the Municipality has not issued any proceedings for eviction and till the Municipality restrains the petitioner from parking lorries, the petitioner can enjoy the facilities of parking, but it

cannot challenge the resolution dated 24.06.2008. The petitioner made a representation on 12.04.2015 to allot some other convenient place for lorry stand but no action has been taken. The 2nd respondent also made a letter to the 4th respondent to allot some other alternative land to the petitioner. But, the 2nd respondent issued notice dated 09.04.2015 for eviction under Section 192(1)(3) of the Municipalities Act, 1965 (for short 'the Act'). Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner submits that as the petitioner came into possession by virtue of allotment made by the respondents- Authorities, it cannot be said that it is an encroacher, as such provisions of Section 192 of the Act has no application and the respondents has to follow the procedure under Section 194 of the Act.

4. On the other hand, Sri N.Venkateswarlu, learned Standing Counsel, appearing for the 2nd respondent submits that since earlier W.P.No.18793 of 2008 is dismissed and the resolution passed by the Municipality is upheld by this Court, the petitioners are treated as encroachers, as such the impugned notice under Section 192 of the Act is issued.

5. A perusal of the proceedings dated 16.11.1992 shows that the petitioner was permitted to shift the lorry stand to Gundamkatta, which is a Government site and later a resolution is passed on 28.02.1997 for allotment of Ac.0.68 cents for the said purpose.

6. In view of the same, the impugned notice can be treated as show cause notice under Section 197 of the Act and the petitioner can file an explanation, within a period of three weeks from today and after considering the said explanation, the 2nd respondent-Kandukur Municipality shall take appropriate action in accordance with law. Till then, *status quo* obtaining as on today shall be maintained by both the parties.

7. With the above observations and directions, the Writ Petition is disposed of. No costs. Miscellaneous petitions, pending if any, shall stand closed.

A.RAJASHEKER REDDY, J

Date: 17-04-2015

Note:

Issue C.C. by Monday.

B/o.

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