

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1187 OF 2015

ORDER:

The writ petition is filed for a *Mandamus* declaring the action of the 2nd respondent in issuing the order No.02/APIIC-IALA/UC/IP/VSP-7, dated 13.01.2015 including the consequential notice No.03/APIIc-IALA/UC/IP/VSP-7, dated 17.01.2015, as arbitrary and illegal.

The case of the petitioner is that his father was assigned land by the Tahsildar, Visakhapatnam in the year 1984 and after getting assignment, his father constructed a premises with asbestos sheet roof bearing D.No.38-22-88, situated near Industrial Estate, Visakhapatnam and started business of Pan Shop in the said premises by obtaining electrical service connection and was also paying municipal taxes. It is stated that after the death of petitioner's father, the petitioner succeeded the said property and continuing the Pan Shop business in the said premises and his name was also mutated in the relevant records. While so, when the 1st respondent officials threatened the petitioner to vacate the premises, he filed OS.No.509 of 2001 and the same was decreed granting permanent injunction restraining the defendants, their men etc. from ever interfering with the possession and enjoyment of the plaint schedule property, in any manner, except under due process of law. In pursuance of the same, the 2nd respondent issued a notice dated 06.01.2015 to the petitioner under Section 452(1) and Section 461(1) of Hyderabad Municipal Corporation Act, directing the petitioner to stop the construction work, forthwith, which was started by the petitioner, recently. In pursuance of the said notice, the petitioner

sent his reply on 09.01.2015, bringing all the facts into the notice of the 2nd respondent. Thereafter, the 2nd respondent issued impugned order dated 13.01.2015, rejecting the request made by the petitioner stating that they are following due process of law. Consequent to the said order the 2nd respondent issued impugned notice dated 17.01.2015, under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (*for short 'HMC Act, 1955'*) to remove the construction within 24 hours. Aggrieved by the same present writ petition is filed.

Learned counsel for the petitioner submits that though petitioner obtained decree in his favour in OS.No.509/2001, the respondents have issued impugned order dated 13.01.2015 and impugned notice dated 17.01.2015, without considering the explanation dated 09.01.2015 filed by the petitioner in proper perspective and without passing a reasoned order, as such the same is in violation of principles of natural justice. He also submits that the respondents 1 and 2 have no power to issue impugned notice and it is only the 3rd respondent who is empowered to issue impugned orders.

On the other hand Sri Roy Reddy, learned Standing Counsel for respondents 1 and 2 submits that by virtue of Section 679-F of the HMC Act, 1955 the 3rd respondent delegated powers to respondents 1 and 2 in respect of industrial estate, where petitioner is claiming. He also submits that as per the decree passed by the Court below in OS.No.509/2001, action has been initiated under Section 636 of HMC Act, 1955 only after considering the explanation of the petitioner, as such, there is no illegality in passing the impugned notice. He also produced photographs, which show that petitioner's construction is a recent construction and the same is obstructing the road.

The main grievance on which the petitioner filed the present writ petition is that he obtained decree in OS.No.509/2001 against the respondents and that the respondents in violation of the said decree, proceeding to demolish the petitioner's property. A perusal of the decree in OS.No.509/2001 shows that petitioner was found to be in possession and that the respondents are directed to follow the due procedure in evicting the petitioner. It is not in dispute that the petitioner filed explanation on 09.01.2015 to the notice issued by the 2nd respondent. The impugned order dated 13.01.2015 also shows that only after considering the explanation of the petitioner the impugned notice dated 17.01.2015 was issued.

Section 679-F of The Greater Hyderabad Municipal Corporation Act, 1955 reads as follows;

679-F. Power to transfer functions of the Corporation to the Andhra Pradesh Industrial Infrastructure Corporation:-
Notwithstanding anything contained in this Act, or in any other law for the time being in force relating to the Municipal Corporations, the Government may in consultation with the Corporation and also the A.P.Industrial Infrastructure Corporation, by notification in the A.P.Gazette, and subject to such restrictions and conditions including those relating to the remittance of such percentage of the property tax to the Corporation and to such control and revision as may be specified therein direct that any power or function vested in the Corporation by or under this Act shall be transferred to and exercised and performed by the Andhra Pradesh Industrial infrastructure Corporation.)

A reading of Section 679-F of The Greater Hyderabad Municipal Corporation Act, 1955, which was relied on by the learned counsel for the respondent Corporation shows that powers of 3rd respondent have been delegated to respondents 1 and 2. As such, it cannot be said that the respondents 1 and 2 have no power to initiate action. More so, even in the Judgement and decree in

OS.No.509/2001, liberty is granted to the respondents 1 and 2 who were parties to that suit and the petitioner never disputed their jurisdiction in the suit also. As such, it cannot be said that the respondents 1 and 2 have no power to initiate action. The photographs produced by the learned Standing Counsel also show that the construction is a recent origin and the petitioner has not produced any permission in respect of the same.

In view of the above, I do not see any merits in the writ petition.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

11.02.2015
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