

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.37654 of 2015

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19.11.2015

Between:

Sri Ganganamma Mutyalamma Potharaju Varla Dvasthanam, Vijayawada

.. Petitioner

and

The State of Andhra Pradesh,

represented by its Principal Secretary,

Municipal Administration and Urban Development Department,

Hyderabad and others

.. Respondents

Counsel for the petitioner: Mr.Raja Rddy Koneti

Counsel for respondent No.1: Government Pleader

for Municipal Administration and Urban Development (AP)

Counsel for respondent No.2: Mr.T.Bala Swamy,

standing counsel for Municipalities

Counsel for respondent No.3: --

The Court made the following:

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ORDER:

This writ petition is filed with the grievance that despite the decree granted in favour of the petitioner on 24.04.2002 in O.S.No.213 of 1998 on the file of learned IV Additional District Judge, Vijayawada, respondent Nos.2 and 3 have been trying to remove the temple structures raised by the petitioner.

Mr.T.Bala Swamy, learned standing counsel for respondent No.2, submitted that while his client is not proposing to remove any part of the temple structures, it is only contemplating to remove the encroachments made by certain persons who are running shops around the temple by encroaching the public road, by invoking the provisions of Section 405 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act').

In my opinion, as far as the decree for injunction obtained by the petitioner is concerned, it is entitled to execute the same under Order XXI Rule 32 C.P.C. against respondent No.2 and a writ petition is not an appropriate remedy for the petitioner for preventing respondent No.2 from acting in violation of the said decree.

Be that as it may, even if respondent No.2 proposes to remove the alleged encroachments by the shop owners around the temple, before doing so, it is bound to issue notices to them under Section 405 of the Act, even if the said provision does not expressly provide for issue of such a notice.

Therefore, respondent No.2 is directed to follow due process of law by issuing notices to the alleged encroachers and considering their objections, if any, before removing the alleged encroachments.

Subject to the above observations and directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, W.P.M.P.No.48430 of 2015 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

19th November, 2015

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