

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.37201 of 2016

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking Mandamus, to declare order, dated 26.10.2016 passed by the 4th respondent for closing the petitioner – M/s. HZ High Way Bawarchi Restaurant, and directing the 3rd respondent to take necessary action, in turn seizing the restaurant by conducting a panchanama on 28.10.2016, as illegal and arbitrary, and consequently, sought a direction the respondents not to harass and not to interfere in any manner in running the multi cuisine restaurant by the petitioner.

Heard and perused the material available on record.

The petitioner is a multi cuisine restaurant, represented by its proprietor Md. Yousof, situated in the first floor of premises No.4-8-1/10, Hayathnagar Main Road, Hayathnagar, Rangareddy District. In the second floor of the said building, some persons have established a Real Estate Company. While so, on 06.10.2016, when the 2nd respondent along with his staff conducted a surprise check in the second floor, they found 16 persons playing cards and, therefore he arrested them, seized the money available with them and produced them before the Court concerned. Thereafter, basing on the information given by the 2nd respondent, the 4th respondent issued the impugned proceedings, pursuant to which the 3rd respondent, after conducting panchanama, seized the petitioner-restaurant. Hence, the present writ petition.

Learned counsel for the petitioner submits that the petitioner is a multi cuisine restaurant and the proprietor of the said hotel is running the same for the past 1 ½ years in the first floor of the said building and some persons, who are not at all concerned with the petitioner restaurant,

involved in playing cards in the second floor of the said building and, therefore, a case in Crime No.933 of 2016 for the offences under Sections 3 & 4 of the A.P. Gaming Act, by the 2nd respondent against said persons and that the petitioner is not an accused in the said crime. He further submits that on the basis of the report furnished by the 2nd respondent, the 4th respondent directed the 3rd respondent to invoke the provisions under Section 133 (1) (a) & (b) of Cr.P.C., and directed to close the said restaurant and accordingly, the 3rd respondent seized the restaurant on 28.02.2016, and if the impugned proceedings are not set aside, the petitioner and the workers working in the said restaurant are put to irreparable loss.

After perusing the material available on record, this Court is of the view that the order passed by the Sub-Divisional Magistrate – 4th respondent is totally erroneous and the provisions of Section 133 (1) (a) & (b) Cr.P.C., are not applicable to the facts of the present case. Therefore, this Court is of the view that the order passed by the 4th respondent is liable to set aside.

Accordingly, the Writ Petition is allowed setting aside order, dated 26.10.2016, passed by the 4th respondent - Sub-Divisional Magistrate and Revenue Divisional Officer (FAC), Ibrahimpatnam, Ranga Reddy and the consequential proceedings, dated 28.10.2016, of the 3rd respondent are also set aside. Further, the authorities concerned are directed to release the premises to the petitioner. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

RAJA ELANGO, J

November 01, 2016.
KTL