

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.333 of 2016

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Date: 06.01.2016

Between:

Sri Misbauddin

.. Petitioner

and

The State of Telangana
rep. by its Prl.Secretary
Municipal Admn., and Urban Development
and another

.. Respondents

Counsel for the petitioner : Mr.S.Raj Kumar

**Counsel for respondent No.1: AGP for Municipal
Administration
(TS)**

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The Court made the following:

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Order:

The petitioner is a resident of Door No.9-20-118/A of Rahmathpura, Nizamabad. He filed this Writ Petition feeling aggrieved by notice No.G1/Enct/A/2015, dated 18-10-2015, of the Commissioner of respondent No.2- Corporation wherein it is alleged that he has encroached the public road near his house and is thereby, causing acute inconvenience to the general public and the neighbours as well. The petitioner was, therefore, called upon to voluntarily remove the encroachment within three days, failing which, the Municipal Corporation will remove the same and recover the expenses from the petitioner. On receipt of the said notice, the petitioner gave a representation on 29-10-2015 wherein he has denied the allegation that he has encroached the public road. The petitioner asserted that the road dividing the three plots belonging to him is his private land and that neither the Government acquired the land and paid the compensation therefor nor the same has not been shown as a public road in the lay out. The petitioner further asserted that as a law abiding citizen, he is entitled to enjoy the property as guaranteed under Articles 19 (5), 31 and 300 A of

the Constitution of India. The petitioner has, therefore, requested respondent No.2 to refrain from removing the compound wall raised by him. After receipt of the said reply, respondent No.2 has issued notice No.G1/TMS/41/2015, dated 23-12-2015, stating that one Shakeel Ahmed, who is a local elected Corporator, has filed a complaint against the petitioner for unlawful encroachment and that having regard to the stand taken by the latter in his explanation, he may furnish documents such as sale deed, link documents, property tax receipts, building permission copy and assessment copy within three days of receipt of the said notice, failing which further action will be taken. Feeling aggrieved by these notices, the petitioner filed this Writ Petition.

Section 402 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), prohibits certain things including placing or depositing upon any street or upon any open channel, drain or well in any street or in any public place, any stall, chair, bench, box [ladder, bale, building materials, building debris or other things] whatsoever so as to form an obstruction thereto or

encroachment thereon *etc.*, and whoever contravenes the said provision shall on conviction be punishable with imprisonment, which may extend to one month, or with fine, which may extend to Rs.5000/-.

Under Section 405 of the Act, the Commissioner may, without notice, remove the encroachments as mentioned under Section 402 thereof.

As rightly pointed out by the learned Counsel for the petitioner, the jurisdiction of the Commissioner can be exercised only if he is satisfied, based on the material, that the public street has been encroached by a person and he has committed any of the acts as enumerated in Section 405 of the Act. Since the petitioner has disputed the allegation made in the notice, dated 18-10-2015, of the Commissioner, the latter appeared to have thought it fit to first decide whether the property being used by the petitioner forms part of the public street or not. Therefore, if, for this purpose, the Commissioner has called upon the petitioner to produce the required documents such as sale deed, link documents *etc.*, no

exception can be taken to it. On the contrary, the petitioner is duty bound to produce these documents and co-operate with the Commissioner in deciding whether any encroachment of the public street as alleged against the petitioner has taken place or not. Indeed, furnishing of the documents as sought by respondent No.2 would facilitate resolution of the dispute regarding the nature of the property, which is, allegedly, encroached. In this view of the matter, I do not find any illegality in notice, dated 23.12.2015, issued by respondent No.2. The petitioner is permitted to submit his documents within two weeks from today. On examination of such documents, respondent No.2 shall take appropriate decision and communicate the same to the petitioner. If the petitioner feels aggrieved by such decision, he is entitled to approach the competent civil Court for appropriate relief.

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

As a sequel to disposal of the Writ Petition, WPMP.Nos.423 and 424 of 2016, filed by the

petitioner for interim relief, are disposed of as
infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 6th January, 2016
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