

**IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH**

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOS. 39285, 39316, 39318 & 39320 of 2016

WP NO. 39285 OF 2016

Between:

M/s Divya Engineering Works, represented by its Proprietor Meda
Sanyasi Rao S/o late Gurappa

....Petitioners

A n d

Greater Visakha Municipal Corporation represented by its
Commissioner, Visakhapatnam and 8 others

....Respondents

DATE OF ORDER: 20.12.2016

HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION NOS. 39285, 39316, 39318 & 39320 of 2016****COMMON ORDER:**

Heard learned counsel appearing for petitioners, learned Government Pleader for Municipal Administration for R3, Sri S. Lakshminarayana Reddy for R1 & R2, Sri M. Ravinder for R4 & R5, Sri P. Jagadish Chandra Prasad for R6, Sri Rama Chandra Rao for R7, G.P. for Revenue for R8 and Sri V.V.N. Narasimham for R9.

2. Petitioners in all these Writ Petitions have established small industrial units in owned premises/leased premises, which are originally intended for residential accommodation. It appears lot of residential houses have come surrounding their units. On account of pollution caused by these industrial units over a period of time there has been protests by the local residents. Having received the complaints from the local residents, the Greater Visakhapatnam Municipal Corporation (first respondent) issued notice dated 1.9.2016 directing the petitioners to close the industries established in the residential area within seven days. The said notice was issued by referring to Sections 441 & 461 of Greater Hyderabad Municipal Corporation Act, 1955 (for short "the GHMC Act"). As it now emerges that the Municipal Corporation issued notices holding that without due permission, residential houses were converted for commercial purposes.

3. Petitioners admittedly did not respond to said notice and filed these Writ Petitions after a lapse of more than two months. Petitioners initially placed reliance on the correspondence between APIIC and the District Collector, where under APIIC suggested for provision of alternate site to relocate the units. Apparently, the Government is not in favour of providing alternate site.

4. Learned counsel appearing for petitioners submits that without prior notice such an order was passed granting only seven days time to move out and a prior notice ought to have been given when such an order is passed, more so, when such an order has got civil and evil consequences as it would be impossible for an industrial unit to relocate and establish itself within short time.

5. At this stage it is useful to consider provisions in Sections 441, 443 and 461 of GHMC Act read as under:

“441. Building not be converted to other purposes

without the permission of the Commissioner:- No person shall, without the written permission of the Commissioner-

(a) use or permit to be used for human habitation any part of a building not originally constructed or authorized to be used for that purpose; or

(b) convert into, or use, or permit to be used, as a chawl or building intended to form a range or separate rooms for lodgers, a building not originally designed or authorized to be so used.

443. No alterations to be made in buildings for human habitation without written permission of Commissioner:-

No person shall without the written permission of the Commissioner or otherwise than in conformity with the terms of such permission make any alteration or cause any alteration to be made in an existing building originally constructed or authorized to be used for human habitation for the purpose of using

it or causing it to be used as a godown, warehouse, workshop, workplace, factory, stable or motor garage.

461. Powers of Commissioner to direct removal of person directing unlawful work: - (1) If the commissioner is

satisfied that the erection or re-erection of any building or the execution of any such work as is described in Section 433 has been unlawfully commenced or is being unlawfully carried on upon any premises he may, by written notice, require the person directing or carrying on such erection or re-erection or execution of work to stop the same forthwith.

(2) If such erection or re-erection or execution of work is not stopped forthwith, the Commissioner may direct that any person directing or carrying on such erection or re-erection or execution of work shall be removed from such premises by any police officer and may cause such steps to be taken as he may consider necessary to prevent the re-entry of such person on the premises without his permission.

(3) The cost of any measures taken under sub-section (2) shall be paid by the said person.

(4) Notwithstanding anything contained in the Act, any person who, whether at his own instance or at the instance of any other person or any body including a department of the Government undertakes or carries out construction or development of any and in contravention of the statutory master plan or without permission, approval or sanction or in contravention of any condition subject to which such permission, approval or sanction has been granted shall be punished with imprisonment for a term which may extend to ten percent of the value of land or building including land in question as fixed by the Registration Department at the time of using the land or building. Provided that the fine imposed shall, in no case be less than fifty percent of the said amount.

6. A bare reading of Sections 441 and 461 of GHMC Act, it is seen that neither of these provisions is applicable to the cases on hand. In the instant cases, the allegation is conversion of residential building for non-residential purpose. The appropriate provision is Section 443. Section 443 prohibits use of any building originally intended for human habitation, as a workshop,

workplace, and factory. Be that as it may, since the power is traceable to Section 443, merely because wrong provision is mentioned does not vitiate the proceedings initiated against petitioners.

7. However, there is merit in the contention of the learned counsel appearing for petitioners that the order is not preceded by notice and opportunity. Where as it mandates the petitioners' to relocate their Units to some other place, within one week. Even in ordinary course such relocation may require longer time than what was granted.

8. Whenever an order of an authority visits with civil and evil consequences, the minimum that is expected from such authority is to cause notice, give opportunity for submission of explanation, consider the explanation and pass appropriate speaking orders thereon, but straight away cannot pass an order directing removal.

9. For these reasons, all the Writ Petitions are disposed of holding that the order dated 1.9.2016 be treated as notice under Section 443 of GHMC Act and the petitioners are given one week time for submission of explanations. If such explanations are submitted, the competent authority of GVMC shall consider said explanation and pass appropriate orders within a further period of two weeks. If no explanation is filed, the order dated 2.9.2016 revives and it is open to GVMC to take further course of action in the matter. In the event of petitioners filing the explanation within one week from today, no coercive action shall be taken against petitioners till final decision is made as directed above. There shall be no order as to costs.

10. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

P. NAVEEN RAO, J

Date: 20.12.2016
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