

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.784 of 2015

Date:10.02.2016

Between:

Adla Lalitha,
W/o Late Ramulu

..... Petitioner

And:

The State of Telangana., repled by its
Principal Secretary, Municipal Admn. &
Urban Development Department, Hyderabad,
and eight others.

.....Respondents

Counsel for the Petitioner: Mr. S.Surender Reddy

Counsel for Respondent No.1: AGP for Municipal Admn.
(TS)

Counsel for Respondent No.6: Mr. P.Shiva Kumar

Counsel for Respondent No.7: AGP for Revenue (TS)

Counsel for Respondent Nos.8 & 9: Mr. Ch.Jagannatha
Rao

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to
declare the action of respondent Nos.1 to 7 in not taking

action against respondent Nos.8 and 9, in pursuance of notice, vide proceedings No.GS/Si/333/2014-15, dated 14.11.2014, of respondent No.3, as illegal and arbitrary.

I have heard Mr. S.Surender Reddy, learned counsel for the petitioner, Mr. N.Praveen Kumar, learned Standing Counsel for Municipalities (Telangana State), representing respondent No.3 and Mr. Ch.Jagannatha Rao, learned counsel for respondent Nos.8 and 9.

The petitioner is the resident of house bearing H.No.1-1-889, Ravindra Nagar Colony, Adilabad, Adilabad District. She has averred that recently, respondent Nos.8 and 9 have installed a flour mill behind her house without permission or licence from the authorities concerned; that on her persistent representations, respondent No.3 has issued notice, dated 14.11.2014, to respondent Nos.8 and 9 directing the latter to remove the flour mill within fifteen days; and that, as no further action was taken thereafter by respondent No.3, she filed this Writ Petition.

By order, dated 02.02.2015, this Court has directed that respondent No.3 shall ensure that respondent Nos.8 and 9 will not run the flour mill.

At the hearing, it has come out that in pursuance of the said direction, the flour mill is seized and the same is not being run as of now.

Respondent Nos.8 and 9 filed a counter-affidavit, wherein they have *inter alia* averred that they had been running the flour mill since 10.4.1984 uninterruptedly; that the petitioner purchased the house site beside the flour mill in the year 1987 and constructed a house in early 1990's by occupying a public nala; and that when she has encroached upon their land to an extent of 3 feet, an objection was raised by them and due to this reason, she has borne grudge against the answering respondents and approached the District Legal Services Authority, Adilabad

by filing PLC.No.254 of 2014, which was closed by setting the Commissioner of respondent No.3 *ex parte* on 02.8.2014.

The counter-affidavit further averred that respondent Nos.8 and 9 have obtained electricity connection and were running the flour mill; that nobody has raised any objection; that the petitioner suddenly started raising objections due to the reasons mentioned above; and that, therefore, the present Writ Petition is filed with *mala fide* intention.

Along with the Writ Petition, the petitioner has filed letter in Roc.No.SI/RTI/320/2014-15, dated 08.9.2014, issued under the Right to Information Act, 2005, addressed by the Public Information Officer, Adilabad Municipality to one A.Naveen Kumar, son of the petitioner. In the said letter, it was informed that flour mills up to the capacity of 5 Horse power (HP) are allowed to run in residential areas; that no timings for running a flour mill are specified; that no permission to run the flour mills is granted to the petitioner by the Municipality; and that a copy of miscellaneous receipt No.33402/335, dated 16.4.2014, was issued to respondent No.8 to the effect that the business should be started after obtaining separate license from the Municipality.

While learned counsel for the petitioner has not placed before the Court any statutory provisions which prohibit running of a flour mill in a residential area, he has relied upon the above-mentioned communication.

Learned counsel for respondent Nos.8 and 9 has not disputed the correctness of the information furnished by the Public Information Officer in the above-mentioned letter. Therefore, in the absence of either party placing the extant legal position before the Court, it has no option other than treating the information furnished by the Public Information Officer of respondent No.3 as reflecting the

true factual and legal position.

Thus, as per this communication, while a flour mill in a residential area is permitted to be run, such permission can be given only for running a flour mill with a motor capacity up to 5 HP only.

As a fact, respondent No.8 has obtained miscellaneous receipt on 16.4.2014 from respondent No.3 subject to the condition that he shall obtain separate license to start the business.

Learned Standing Counsel for respondent No.3, submitted that the license which was granted to respondent No.8 earlier was cancelled on 06.4.2014 by respondent No.2 and that at present, respondent No.8 is not holding any license.

In the above facts and circumstances of the case, this Court is of the opinion that respondent No.8 cannot be prevented from running the flour mill completely. He can, at the same time, run the flour mill by installing a motor whose capacity shall not exceed 5 HP. Similarly, respondent No.8 shall also obtain a separate license as, the previous license is shown to have been cancelled. As regards the timings, though the Public Information Officer in the above-mentioned communication has stated that no timings for running a flour mill are specified under law, since the petitioner appears to be the immediate neighbour, she cannot be put to inconvenience of the noise emanating out of the running of the flour mill at least during the night hours.

Accordingly, the Writ Petition is disposed of in the following terms:

- (1) Respondent No.8 is permitted to replace the existing motors in the flour mill with maximum capacity of 5 HP. To enable respondent No.8 to do this, respondent No.3 shall open the seals of the flour mill and permit him to replace

the motors as mentioned above;

- (2) After such replacement, respondent No.8 shall make an application before respondent No.3 for grant of a fresh license;
- (3) In the license, respondent No.3 shall specify the timings during which the flour mill must be allowed to run as 6 am to 8 pm;
- (4) In the event, a fresh license is granted, respondent Nos.8 and 9 shall be permitted to run the flour mill subject to the above conditions; and
- (5) If any of the above conditions are found violated, respondent No.3 shall cancel the license and take action for closing the flour mill after notice to respondent Nos.8 and 9.

As a sequel to disposal of the Writ Petition, interim order, dated 02.02.2015, in WPMP.No.953 of 2015 is vacated and WPMP.No.953 of 2015 and WVMP.No.657 of 2015 are disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*10th February, 2016
DR*