

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.7248 OF 2016

ORDER

The grievance of the petitioner is with regard to the notice dated 18.10.2015 issued by the Municipal Corporation, Nizamabad, directing him to remove the encroachments allegedly made by him on the public road. This notice was issued under Section 402 of the Greater Hyderabad Municipal Corporation Act, 1955 (for brevity, 'the Act of 1955'). Section 402 of the said Act reads as under:

'402. Prohibition of depositing etc., of thing in streets:-- (1) No person shall, except with the written permission of the Commissioner—

(a) place or deposit 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;

(b) project, at a height of less than twelve feet from the surface of the street, any board or chair, beyond the line of the plinth of any building over any street;

(c) attach to, or suspend from any wall or portion of a building abutting on a street, at a lower height than aforesaid anything whatever.

(2) Whoever contravenes the provisions of sub-sec. (1) shall on conviction, be punishable with imprisonment which may extend to one month or with fine which may extend to five thousand rupees or with both.

(3) Anything placed or deposited in contravention of the provisions of sub-section (1) may be seized by the Commissioner or any other person duly authorized by him in this behalf, and on conviction for an offence under sub-section (2) the court may also pass such order as it thinks fit respecting the disposal of such thing including confiscation of such thing.'

Sri V.Satyam Reddy, learned standing counsel for the respondent corporation, stated before the Court that the encroachment allegedly made by the petitioner on the public road is a compound wall. The reply filed by the petitioner in response to the afore-stated notice also bears out this fact.

This Court is of the opinion that the nature of the encroachments covered by Section 402 of the Act of 1955 is in relation to things that could be deposited upon the public road causing obstruction. The nature of the things covered by this provision is set out therein. That being so, a compound wall constructed upon a public road would not come within the ambit of Section 402 of the Act of 1955. The impugned notice reflects complete non-application of mind by the municipal authorities and therefore cannot be sustained.

The writ petition is allowed setting aside the impugned notice dated 18.10.2015 issued by the Municipal Corporation, Nizamabad, under Section 402 of the Act of 1955. This order shall however not preclude the Municipal Corporation, Nizamabad, from initiating appropriate action, if warranted, in accordance with law.

Pending miscellaneous petitions shall also stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

14th MARCH, 2016
PGS