

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.31265 of 2014

ORDER:

Heard the learned counsel for the petitioner and Sri P.Keshav Rao, learned Standing Counsel for Greater Hyderabad Municipal Corporation (GHMC), appearing for respondent Nos.1 to 4.

2. Petitioner is a proprietary concern engaged in production of bakery items and is operating from a premises bearing Door No.2-58/6, near Ambedkar Statue in Ward No.3, Mallapur, Kapra Circle-I of Hyderabad. The subject premise is owned by its proprietor. There is a vacant site adjacent to the petitioner's premises and there are no other residential houses adjacent to this premises. However the house of 5th respondent is located opposite to the petitioner's property.

3. Petitioner made an application for issuance of trade licence on line to the Greater Hyderabad Municipal Corporation (2nd respondent) on 21-02-2014 vide reference No.5074012012. But there was no response from the said Corporation and so the petitioner commenced its activity therein.

4. Prior to the petitioner using the property for bakery items, one M.A. Raheem as tenant of the proprietor petitioner had carried on the bakery business without any complaint from anybody. But he vacated the premises subsequently since he could not pay the

increased monthly rent sought by the proprietor of petitioner. Petitioner contends that the said M.A. Raheem instigated 5th respondent to create hurdles to the petitioner's business and 5th respondent made a complaint to the Assistant Medical Officer, Health (4th respondent) alleging that the petitioner's bakery business was causing smell and dust and inconveniencing him.

5. A show cause notice was issued to the petitioner on 25-03-2014 by 4th respondent asking him to close the trade business within seven days. Petitioner contends that he approached 4th respondent and explained to her about the motivated complaint of 5th respondent and that she then stopped interfering with the business activity of the petitioner.

6. Subsequently, another show cause notice dt.08-08-2014 was issued to the petitioner by 4th respondent with the same allegations.

7. Petitioner gave an explanation dt.11-08-2014 requesting for grant of trade licence in his favour.

8. He contends that 4th respondent advised him to sort out his differences with 5th respondent and then only she would process the trade application or else she would seal the above premises of the petitioner.

9. Petitioner alleged that he approached 5th respondent and requested him to allow him to carry the bakery business in the above

premises, but the 5th respondent insisted that a portion of the petitioner's property be transferred in his name and then only he would stop causing trouble to the petitioner's business activity.

10. Petitioner then made a complaint to the S.H.O., Nacharam Police Station on 13-08-2014 against 5th respondent. But no action was taken by the police.

11. He then approached this Court by filing this W.P. challenging the action of the respondent No.4 in sealing his premises on ground that it is violation of principles of natural justice and pointed out that 5th respondent never complained when the petitioner's tenant was earlier carrying on business. He contended that the height of the Chimney attached to the fire place in the petitioner's premises is 15' from the ground level and it does not affect any residents in the locality. He alleged that the delay in processing his application for grant of trade licence from 21-02-2014 is only at the behest of 5th respondent to prevail over 4th respondent to blackmail him into parting with his property. He contended that no speaking orders were passed closing petitioner's business and without doing so, respondents cannot seal the petitioner's premises.

12. On 18-10-2014, this Court admitted the Writ petition and in W.P.MP.Nos.39077 and 39078 of 2014, passed the following common order:

*“Heard counsel for the petitioner and Standing Counsel
for respondents 1 to 4.*

Petitioner questions the sealing of the petitioner's premises by the respondents without passing any orders giving reasons for the same, and without calling for an explanation from the petitioner against the complaint allegedly received by the petitioner from the 5th respondent.

I find considerable force in the submissions made by the counsel for the petitioner without issuing a show cause notice to the petitioner and hearing his explanation, order for sealing of the petitioner's premises could not have been passed.

Therefore, there shall be interim direction as prayed for."

13. W.V.M.P.No.844 of 2017 was filed by the respondent Nos.2 to 4 to vacate the said order.

14. On 21-03-2017, this Court dismissed the vacate stay petition on the ground that the vacate stay petition/counter filed by respondent Nos.2 to 4 did not disclose which provision of law was invoked by them to seal premises of the petitioner and that no reasoned order was passed by them after considering petitioner's explanation dt.11-08-2014 to the show cause notice dt.08-08-2014. It held that provisions of Section 461 (A) of the GHMC Act, 1955 has no application since it is not the case of respondent Nos.2 to 4 that there is any unauthorized construction of the property of the petitioner.

15. This reasoning in the order dt.21-03-2015 for not vacating the interim orders granted by this Court and for dismissing

W.V.M.P.No.844 of 2017 has not been shown by the learned Standing Counsel for the respondent Nos.1 to 4 to be defective in any way.

16. The notice sent to respondent no.5 is returned 'unclaimed'. So it was deemed served. Since he did not deny that earlier when petitioner's tenant M.A.Raheem did bakery business is same premises, he had not objected and also that he did not demand petitioner to transfer his property as a condition for stopping harassment of petitioner, these allegations of petitioner have to be accepted as true.

17. That apart, assuming that there was some pollution, even Pollution Control Board authorities would first ask a business/industry to take steps to reduce the same and would not straightaway close a business/seal it. No such opportunity was given to petitioner.

18. Subsequently, the seal of the premises of the petitioner was raised on 24-10-2016 and it is stated that trade licence was also be issued to the petitioner in June 2017 with abnormal delay in implementing the interim order granted by the Court.

19. I am therefore of the opinion that the action of the respondents in denying petitioner trade licence and sealing his premises is arbitrary and illegal and violates Articles 14, 19(1)(g) and 300-A of the Constitution of India.

20. Therefore, the action of the respondents in sealing the petitioner's premises is declared to be arbitrary, illegal and violative

of Articles 14 and 300-A of the Constitution of India apart from principles of natural justice and the respondents are restrained from interfering with the bakery business being run by petitioner in his premises.

21. The Writ Petition is accordingly disposed of with costs of Rs.5,000/- (Rupees Five Thousand only) each to be paid to the petitioner by 1st respondent and 5th respondent.

22. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

Date: 14-07-2017
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JUSTICE M.S.RAMACHANDRA RAO

