

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION NO. 1576 OF 2017

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents authorities in trying to demolish the petitioner’s shops namely (1) Diyanka Communications Shop, (2) Venkateswara Pan Shop, (3) Krishnarajuna Rao Pan Shop and (4) Usha Pan Shop, all are situated Opp. Asian Udaya Bhaskar Theatre, Bridge Road, Bhadrachalam, Bhadradi District including dispossess the petitioners without considering the explanation dated 04.01.2017 in connection with the 4th respondent notice dated 31.12.2016 issued under Section 103 of Grampanchayat Act 1964, without removing the ATM Concrete Slab is illegal and void and opposed to Article 14, 19, 21 and 300-A of Constitution of India and consequently to direct the respondent authorities not to interfere with the peaceful possession of the petitioners shops in question without following due process of law and direct to remove the ATM Concrete Slab in the Drainage Canal and to pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.”

2. Heard Sri Mummaneni Srinivasa Rao, learned counsel appearing for petitioner, Government Pleader for Revenue for respondents 1 to 3, Government Pleader for Panchayat Raj for R5 and Sri G. Narender Reddy, learned counsel appearing for 4th respondent.

3. According to petitioners their forefathers occupied the Government land about five decades back and petitioners are running the pan shops and eking out their livelihood. Earlier, petitioners herein, filed W.P.No. 16808 of 2016

before this Court and this Court on 26.5.2016 in W.P.M.P.No. 20696 of 2016 passed the following order:

“When the matter is called, learned Government Pleader, on instructions, submits that the petitioners are not in possession of the subject property.

Status quo obtaining as on today with regard to possession of the subject property, shall be maintained. However, this order will not preclude the respondents from proceeding in accordance with law.”

4. The above Writ Petition is pending consideration before this Court. While things stood thus, the Secretary of 4th respondent Grampanchayat issued a notice in RC No.122/2016 dated 31.12.2016, asking the petitioners to remove the shops. In response to the said notice, on 4.1.2017 petitioners herein submitted explanation. The sum and substance of the case of the petitioners is that without considering the said explanation dated 4.1.2017, respondent authorities are proceeding with the process of removal of structures.

5. Filing of explanation dated 4.1.2017 to the impugned notice dated 31.12.2016 is not disputed. It is the specific submission of the learned counsel for petitioners that the impugned action, which culminated into notice dated 31.12.2016, is not preceded by any opportunity and the same is illegal, arbitrary and violative of Articles 14, 19 and 21 of Constitution of India.

6. Learned counsel appearing for petitioners submits that if the respondents are permitted to remove the structures, the petitioners herein will be deprived of their livelihood.

7. It is not the case of the respondents herein that the 4th respondent Grampanchayat considered the explanation dated 4.1.2017 filed by the petitioners herein.

8. The settled preposition of law is that any action which has civil consequences must necessarily be preceded by notice and opportunity to the persons likely to be affected by such action. In the instant case, without issuing any show cause notice straightaway the 4th respondent issued the impugned notice dated 31.12.2016. Since the petitioners herein submitted their explanation on 4.1.2017, this Court deems it appropriate to dispose of the Writ Petition with a direction to the 4th respondent Grampanchayat to consider the explanation dated 4.1.2017 submitted by petitioners herein to the notice dated 31.12.2016 and pass appropriate orders in accordance with law after giving notice of hearing to the petitioners and all other stake holders. Till such exercise attains finality, status quo with regard to the subject structures shall be maintained by the respondents.

9. Accordingly, the Writ Petition is disposed of. No costs. As a sequel thereto, miscellaneous petitions, pending if any in this Writ Petition, shall also stand closed.

JUSTICE A.V. SESA SAI

DATE: 17.01.2017
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