

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.32141 of 2017

ORDER:

Heard learned counsel for the petitioner and Sri N.Ashok Kumar, learned Standing Counsel for the respondent-Municipal Corporation.

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“....to issue an appropriate writ, order or direction, more particularly one in the nature of writ of mandamus, declaring the action of the respondents in threatening to demolish the Public Conveniences at Opposite to Andhra Bank, Koti, Hyderabad constructed on Build-operate-transfer (BOT) basis contrary to the conditions Agreement, dated 15.07.2009, without any notice or paying compensation for structures and not allotting alternative site as illegal, arbitrary, unjust, violative of principles of natural justice, violate of fundamental rights guaranteed under Constitution of India, contrary to the HMC Act, 1955 ...”

A Memorandum of Agreement, dated 15.07.2009, was entered into in between the petitioner and the respondent-Municipal Corporation. The petitioner, by virtue of the said Agreement, offered the services to the respondent-Municipal Corporation to undertake the construction of public conveniences on BOT basis.

It is the submission of the learned counsel for the petitioner that contrary to Condition No.9 of the Memorandum of Agreement, dated 15.07.2009, the respondent authorities are threatening to demolish the said public conveniences situated

opposite Andhra Bank, Koti, Hyderabad constructed on Build-Operate-Transfer basis. In elaboration of the same, it is submitted by the learned counsel for the petitioner that without giving three months' time in advance and without providing alternative site and without paying compensation what-so-ever, the respondent authorities are threatening to demolish the subject constructions.

On the contrary, it is contended by the learned Standing Counsel for the respondent-Municipal Corporation that the period of five years, as agreed to, came to an end long back and in view of the same, Condition No.9 of the Agreement cannot be pressed into service by the petitioner and the petitioner is not entitled to any relief from this Court under Article 226 of the Constitution of India. It is further submitted by the learned Standing Counsel that the proposed area is required for the purpose of Metro Rail which is a public purpose and the petitioner has no right, as such he is not entitled for any indulgence of this Court under Article 226 of the Constitution of India.

A perusal of Condition No.1 of the Agreement shows that the Agreement was entered into only for a period of five years and admittedly, the said period came to an end long back. A reading of Condition No.9 of the Agreement demonstrates, in clear and vivid terms, that the safeguards as provided under the said Condition are available only during the currency of the contract period. The proceedings of the Zonal Commissioner

(Central Zone), GHMC, dated 30.10.2014, shows that the respondent-Municipal Corporation permitted the petitioner to add one ladies toilet and one staff room to the existing BOT toilet.

By any stretch of imagination, the said proceedings cannot be construed as an extension of contract period. It is the specific submission of the learned Standing Counsel that the said premises is required for public purpose i.e. for Metro Rail Project. Therefore, this Court does not find any merit in the writ petition.

The writ petition is accordingly dismissed. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any pending in this writ petition shall stand disposed of.

A.V.SESHA SAI, J

Dt:19.09.2017.
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