

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.17346 of 2017

ORDER:

This writ petition is filed by the petitioner, under Article 226 of the Constitution of India, seeking to declare the notice, dated 02.05.2017, issued by the 2nd respondent without recourse to law as illegal and arbitrary and consequently to direct the respondents not to meddle with the property of the petitioner in the Plot No.710B, Road No.36, Jubilee Hills, Hyderabad, in any respect.

2. Heard and perused the material available on record.

3. The brief facts, that are necessary for disposal of the present writ petition, are as follows:

The petitioner is a partnership firm carrying on business and to run the restaurant as part of their business, the petitioner has taken premises bearing No.8-2-293/82/A/710B, Plot No.720/B/1, in an extent of 554 square yards with built up area of 7200 square feet, Block – 2, in Survey No.403/1, old and 120 new of Shaikpet and 102/1 of Hakimpet, within the limits of Jubilee Hills Co-operative Housing Society, Road No.36, Hyderabad, on lease from the owners vide lease deed, dated March, 2016, and that the lease period is upto 30.04.2021 and that the possession of the premises has been taken by paying the agreed amount and applications were made to the concerned departments for necessary permissions and license was issued by the Government under Food Safety and Standards Act. It is further submitted by the petitioner that the 2nd respondent, basing on the complaint

lodged by a third party, who is a business rival, without any enquiry, issued notice under Section 402 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act'), dated 02.05.2017, stating that the petitioner has unlawfully erected/constructed at Premises bearing Plot No.710B, situated at Road No.36, Jubilee Hills, Hyderabad, by encroaching the park and directed to voluntarily remove/vacate the encroachment within a period of three (3) days on receipt of the said notice, failing which the GHMC will remove the same under Section 405 of the Act.

4. The main grievance of the petitioner is that the staff of the 2nd respondent, without there being any further notice, visited the subject premises and directed the petitioner to remove the structure in the subject premises. The petitioner is apprehending that the 2nd respondent may, at any movement, remove the structure in the leased premises of the petitioner, under the guise of the impugned notice, dated 02.05.2017.

5. It is the case of the petitioner that the petitioner has not encroached any public place and that the impugned notice also does not disclose the exact encroachment made by the petitioner herein.

6. Learned counsel for the petitioner submitted that the notice, dated 02.05.2017, issued by the 2nd respondent is *ex-facie* illegal since it was issued without any show cause notice or any enquiry and that the notice is liable to be set aside.

7. Having regard to the facts and circumstances of the case and the submissions of the learned counsel for the petitioner, this Court intends to dispose of the writ petition with the following direction:

The 2nd respondent is directed to issue a fresh notice to the petitioner herein, if there is any encroachment, informing the exact encroachment and the details of the encroachment and the petitioner is directed to submit his explanation within a period of fifteen (15) days after receipt of the said notice and the 2nd respondent is directed to decide the issue after receipt of the explanation of the petitioner and until then, the 2nd respondent is directed not to interfere with the possession of the petitioner in the subject premises. If there is any encroachment, the 2nd respondent is at liberty to take appropriate action, in accordance with law.

8. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

RAJA ELANGO,J

Date: 1st June, 2017

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