

*** THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT PETITION No. 30773 of 2013

07.07.2017

Between

Gunturi Varalakshmi w/o late Sitaramaiah, and others

... Petitioners

\$ 1. State of Andhra Pradesh rep. by its Principal Secretary to Government, Municipal Administration & Urban Development Department, Secretariat, Saifabad, Hyderabad, and others

...Respondents

! COUNSEL FOR THE PETITIONERS: Mr. Nimmagadda Satyanarayana

^ COUNSEL FOR THE RESPONDENTS:

G.P. for Municipalities for R1
Sri B.D. Maheswara Reddy for R2
G.P. for Home for R3
G.P. for Medical & Health for R4
Sri B. Shiva Kumar for R5

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> Head Note:

? CITATIONS: 1997 (1) MPLJ 306

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* * * *

Writ Petition No. 30773 of 2013

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....Respondents

JUDGMENT PRONOUNCED ON: 07.07.2017

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to see the fair copy of the Judgment? :

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**WRIT PETITION No. 30773 of 2013****ORDER:**

This petition is filed for writ of mandamus to declare the inaction on the part of respondent Nos.2 to 4 for not considering the representation dated 15.09.2013 and 04.10.2013 about the prevention of public nuisance alleged to have been caused by 5th respondent by throwing garbage, stocking cattle in front of the house of the petitioners in the midst of residential area on S.P.P. Road, Ponnur Town, Guntur District.

The brief facts of this petition as per the averments made in the affidavit filed by the 3rd petitioner are that the petitioners 1 and 2 are the absolute owners of the house situated in door No.16-7-1/2 of SSP road, near Vysya Bank, Ponnur Town, Guntur District. The 5th respondent is resident of door No.16-7-3 in the same locality in front of the house of the petitioners which is at a distance of 30 meters from his house. 5th respondent is feeding her cattle in her house and throwing all the animal dung, broken glass pieces and rubbish on the road in front of the house of the petitioners. The 3rd petitioner had orally informed 5th respondent not to throw the rubbish in the main road as it is causing health problems to family members and neighbours. 5th respondent filed a suit in O.S.No.17 of 2006 on the file of the Principal Junior Civil Judge, Ponnur against the petitioners for permanent injunction.

The 3rd petitioner had submitted a representation dated 15.09.2013 to the 2nd respondent, Municipal Commissioner, Guntur District to take action against 5th respondent in causing

public nuisance by dumping garbage in front of her house. The 2nd respondent issued notice to the 5th respondent and in spite of that 5th respondent is continuing to throw the garbage over the street in front of the house of the petitioners. The 3rd petitioner has also submitted a representation dated 04.10.2013 to the 3rd respondent with a request to prevent 5th respondent by throwing garbage in front of her house and the 3rd respondent stated that it is purely a civil matter and he has no authority to interfere. It is further stated that in spite of the two representations given to the Municipal authorities and the police, the concerned authorities did not take any action in preventing the public nuisance caused by 5th respondent and therefore, she filed the present writ petition to direct the concerned authorities to take appropriate action in the matter.

Respondent Nos.2 and 3 have filed their counter-affidavits.

None appeared on behalf of 5th respondent.

Heard Sri Sarath Kumar, learned counsel for the petitioners, Sri N.Venkateswarlu, Standing Counsel for Municipalities, Assistant Government Pleader for Home and Sri Ahmed Gori, Assistant Government Pleader for Municipal Administration.

Respondent No.2 filed counter on 8.12.2013 stating that respondents are taking all possible steps in accordance with law and that there are no grounds in the writ petition for warranting interference by this Court and sought for dismissal of the writ petition.

Respondent No.3 filed counter today stating that he is the Sub-Inspector of Police, Ponnur Town police station, Guntur District and the contentions of the petitioners raised in their affidavit are incorrect and that there are civil disputes between the petitioners and 5th respondent in respect of throwing of garbage on the road in front of the house of the petitioners. It is further stated that the petitioners have not made any representation or any complaint dated 04.10.2013 before the 3rd respondent and the allegations made by the petitioners are false and baseless and that the petitioners have not sought any police-aid in this matter and therefore, prayed to dismiss the petition.

The petitioners 1 to 3 have invoked the jurisdiction of this Court by way of writ of mandamus to declare the inaction on the part of respondent Nos.2 to 4 as illegal and direct the concerned authorities to prevent the public nuisance of dumping the garbage by 5th respondent in front of the house of the petitioners.

As a matter of fact, this Court has already granted interim order, dated 23.12.2013, which reads as under:

“On behalf of Ponnur Municipality, its Commissioner swore to an affidavit and filed into the Court. In paragraphs 3, 4 and 6, it is stated by the Commissioner of the Municipality that the 5th respondent has been dumping the material in front of the house of the writ petitioners and in spite of the notice issued by the Commissioner of the Municipality for its removal and for dumping the same on the outskirts of the town, there was no response from the 5th respondent and hence, prosecution was launched against the 5th respondent on 07.11.2013.

It is clear therefore, that the 5th respondent is not acting strictly in accordance with law in the matter. Therefore, Ponnur Municipality shall immediately take steps for removing the garbage dumped in the street margin opposite to the house of the petitioners by the 5th respondent and will also ensure that no further animal refuse/waste material will be dumped by the 5th respondent in the street margin. Ponnur Municipality shall be at liberty to recover the money expended by it in this regard from the 5th respondent.

It is needless for me to observe that the 3rd respondent police will provide the necessary man power for ensuring that no untoward incident will take place, when Ponnur Municipality gets the dump removed, at the hands of the 5th respondent.

Notice.”

In the interim order, there are specific directions given to the municipal authorities as well as to the police officials.

Learned Standing Counsel for Municipalities and Assistant Government Pleader for Municipal Corporation submits that they are taking all the care by removing the garbage whenever 5th respondent is dumping in front of the house of the petitioners and therefore, there are no laches on their part in that regard.

Learned counsel for petitioners submits that 5th respondent is still throwing garbage in front of the house of the petitioners and causing lot of inconvenience and respondent Nos.2 to 4 are not taking proper action in that regard.

On consideration of the facts and circumstances of the case, it is obvious that there is a civil litigation between both the parties and a civil suit has been filed by the 5th respondent against the petitioners and it is stated that the said suit was dismissed in

favour of the petitioners. It is obvious from the counter filed from the respondents that they are taking appropriate steps for removing the garbage being dumped by respondent No.5 in front of the house of the petitioners.

Sri N. Venkateswarlu, Standing Counsel for Municipalities has also showed a recent photograph obtained on 31.05.2017 that the garbage has been removed and there is no garbage in front of the house of the petitioners. It is submitted that Ponnur Municipality is taking all the care in removing the garbage.

On consideration of the representations of both sides counsel, it is obvious that the Municipality appears to have been removing the garbage in front of the house of the petitioners now and then. In such circumstances, the petitioners are directed to inform the concerned authorities whenever respondent No.5 is dumping garbage in front of their house, so that they would take appropriate action in that regard. It is pertinent to note that no one appeared on behalf of 5th respondent to represent her case.

It is pertinent to note that the petitioner has got alternative remedies. It is obvious that she has not availed civil and criminal remedies. She is directed to approach the legal services authorities in the District for proper guidance and advice. Without exhausting the remedies available to her at the district level, she had approached this Court seeking for extraordinary remedy of writ of mandamus. It is not uncommon in many places public nuisance is taking place, and the remedies are available under civil and criminal laws, consumer forum, and even can approach legal services authorities for redressal of her grievance. People usually

resort to above forums and after exhausting the remedies they resort to extraordinary jurisdiction of High Court.

In **Jawarchand Poonamchand Dassaji v. State of M.P.**¹, the Madhya Pradesh High Court held as under:

“14. The celebrated dictum is '*ubi jus, ibi remedium*'. Ordinarily there has to be course under ordinary law and the recourse to extraordinary provision like Article 226 should be an exception. In case of a public nuisance or other wrongful act affecting or likely to affect the public, a suit for declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted by two or more persons with the leave of the Court to combat public nuisance in an effort to incinerate public injury and to idolize public interest in terms of section 91 of the Code of Civil Procedure or section 133 of the Code of Criminal Procedure if so warranted by facts.”

In view of the above, the Writ Petition is disposed of with a direction to the petitioner to avail appropriate remedies by approaching the appropriate authorities concerned for redressal of her grievance in accordance with law. No costs. Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date: 07.07.2017

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¹ 1997 (1) MPLJ 306

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