

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.26915 of 2015

ORDER:

Seeking issuance of a writ of mandamus, declaring the proceedings No.22/ACP/C4/GHMC/2015 dated 22.08.2015 as illegal and arbitrary, the present Writ Petition came to be filed.

2) The facts, which lead to filing of the present Writ Petition, are as under :-

The petitioner herein is running a printing press under the name and style of Sri Srinivasa Graphics and Creative Offset Printers in the premises bearing No.16-11-22/15, Krishna Tulasinagar, Moosarambag, Hyderabad. It is said that the 4th respondent, who is alleged to have bore grudge against the petitioner, lodged a complaint before the 3rd respondent complaining about the activities of the petitioner/press, which is causing lot of nuisance to public in the said residential area. Basing on the complaint, the 3rd respondent issued a notice to close down the business. Challenging the same, the petitioner filed W.P.No.935 of 2015. By an order dated 23.01.2015, this Court allowed the Writ Petition by setting aside the proceedings dated 17.01.2015 issued by the third respondent therein and directed him to consider the explanation dated 08.01.2015 submitted by the

petitioner and pass orders in accordance with law within a period of four weeks. It is stated that without passing any orders on the explanation dated 08.01.2015, the third respondent issued a notice under Section 452(1) and 461(1) of Greater Hyderabad Municipal Corporation Act, alleging that there are deviations as per the sanctioned plan and threatened to demolish the said building. The action of the authorities in trying to demolish the building was challenged by way of filing O.S.No.1905 of 2015. In I.A.No.614 of 2015 filed along with the said O.S.No.1905 of 2015, the trial court ordered *status-quo* on 21.08.2015. Immediately on the next day i.e., on 22.08.2015 the Assistant City Planner, South Zone, Circle IV, GGHMC, Hyderabad, issued a notice under Section 452(2) of the Hyderabad Municipal Corporation Act, alleging that the petitioner has been running the business without having any valid license and accordingly demanded closure of the printing press. The said notice was said to have been served on the petitioner at about 2.45 p.m., on 22.08.2015 asking the petitioner to close down the business. Challenging the said notice, the present Writ Petition came to be filed.

3) By an order dated 24.08.2015 this Court while issuing rule nisi, suspended the impugned order.

4) A counter came to be filed by respondents 2 and 3 disputing the averments made in the affidavit filed in support of the writ petition. It is stated that the printing press, which is in a residential area is creating severe noise pollution and obnoxious smell which is emanating from the premises, is causing lot of air-pollution. It is further stated that the petitioner could not have converted a residential premises into commercial activity. It is further urged that the activities of the petitioner, in the absence of any license, are illegal. Hence, impugned proceedings came to be issued for closure of the business. It is further stated that though a provisional trade license was given to the petitioner on 04.08.2015, but the same was not extended.

5) In the counter filed by the 4th respondent, who is the neighbour to the writ petitioner, it is alleged that the business activities of the petitioner in residential locality is causing not only noise pollution but also air pollution. It is stated that the obnoxious smell which is emanating from the chemicals used, is causing suffocation to the residents of the said area. It is also stated that the operation of high HP motor driven cutting machines, which are being used in the big scale bookbinding operations of the petitioner is causing damage to his building. It is further stated that the permission obtained by the petitioner was for running a small business. Though the press was started in small-scale, it is now being expanded

and now running a large-scale bookbinding business through his two printing presses viz., M/s. Creative Offset Printers and M/s. Sri Srinivasa Graphics. It is further stated that as per G.O.Ms.No.363, running of big or medium printing press is not allowed in any residential premises. It is stated that the NOCs obtained by the petitioner from the neighbours are not genuine as they do not contain any date. One M.Jagadish Kumar, from whom the NOC obtained, is not at all the neighbour of the petitioner. Having regard to the above, it is urged that continuation of business in the said premises is illegal and improper.

6) It may be true that the petitioner may not be having a valid license to run a printing press in the said premises. It may also be true that provisional license which has been granted earlier was not extended, but any action to be taken by the authorities should be in accordance with law. As seen from the record, earlier on 06.01.2015 a show-cause notice was issued, alleging that the business of the petitioner was likely to cause nuisance to the neighbours under clause ii(e) of sub section (1) of Section 521 of the Hyderabad Municipal Corporation Act. Pursuant thereto, the petitioner submitted his explanation on 08.01.2015. Without considering the explanation submitted by the petitioner, the authorities issued proceedings dated 17.01.2015 directing the petitioner to close the business activities, temporarily till further orders of the Commissioner are passed under

Section 622 of the Hyderabad Municipal Corporation Act. The said proceedings were challenged before this Court by way of W.P.No.935 of 2015. By an order dated 23.01.2015, this Hon'ble Court allowed the Writ Petition by setting aside the said proceedings and consequently direct the respondent/authorities to consider the representation dated 08.01.2015 and pass orders in accordance with law. Without passing any orders on the explanation submitted by the petitioner, a notice under Sections 452(1) and 461(1) of GHMC Act came to be issued to the petitioner vide notice No.22/ACP/C4/GHMC/15 dated 12.08.2015 directing the petitioner to submit his explanation with regard to deviations made to the sanctioned plan in the premises No.16-11-22/15, Krishnatulasi Nagar, Hyderabad. He was also asked to produce the ownership documents along with the sanctioned plan for verification along with BPS/BRS if any. The notice also indicates that the petitioner was directed to appear before the Deputy Commissioner, on 20.08.2015 at 3.00 p.m. On 20.08.2015, the petitioner is said to have appeared and submitted his explanation enclosing the documents as sought for. On 22.08.2015, the impugned order came to be passed directing the petitioner to close down the business within two days. In the said order there is no reference either to the explanation submitted on 08.01.2015 to the show-cause notice issued on 06.01.2015. The said impugned notice refers only to the complaint petition given on 20.08.2015, notice dated 12.08.2015

and the reply dated 20.08.2015. First para of the order refers to the complaint given against the petitioner regarding the air pollution and noise pollution in the said area due to running of the said press. In respect of the same, no notice was issued to the petitioner under the relevant provision of the Act. The second para of the said notice refers to violation of building plan and that authorities were not satisfied with the explanation given by the petitioner. The third para refers to violation of conditions imposed while granting provisional trade license, for running of the printing press. Hence, the petitioner herein was directed to close down the afore mentioned trade of running the printing press, within two days, as he has violated the rules and regulations, as insisted in the provisional trade license.

7) It is to be noted that the reason for ordering closure of the printing press being that he was running the press without having a valid license thereby violating the rules and regulations imposed in the provisional trade license i.e., causing noise pollution and also air pollution due to running of the press. The show-cause notice, which was issued to the petitioner, was under Sections 452(1) and 461(1) of the GHMC Act. The said provision deals with illegal constructions or deviations made if any. It does not refer to eviction or closure of business due to pollution. It would be useful to extract the Section 452(1), which is as under:-

Section 452: Proceedings to be taken in respect of building or work commenced contrary to Act or bye-laws :-

(1) If the erection of any building or the execution of any such work as is described in Section 433 is commenced or carried out contrary to the provisions of this Act or bye-laws made thereunder, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 426 shall-

(a) by written notice, require the person who is erecting or re-erecting such building or executing such work or has erected or re-erected such building or executed such work, on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorized by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorized by him in that behalf, to show sufficient cause why such building or work shall not be removed, altered or pulled down.

8) The relevant provision for closing down the business if there is any violation of trade is under Section 521 of the H.M.C. Act, which reads as under :-

Section 521. Certain things not to be kept and certain trades and operations not to be carried on, without a licence:-

(1) Except under and in conformity with the terms and conditions of a licence granted by the Commissioner no person shall-

(a) keep, in or upon any premises, for any purpose whatever;

(i) any article specified in Part I of Schedule 'P'

(ii) any article specified in Part II of Schedule 'P' in excess of the quantity of such article which may at any one time be kept in or upon the same premises without a licence;

(b) keep, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of schedule 'P';

(c) Keep, in or upon any building intended for or used as a dwelling or within fifteen feet of such building, cotton, in pressed bales or boras or loose, in quantity exceeding four cwts;

(d) keep or allow to be kept in or upon any premises, horses, cattle or other four footed animals-

(i) for sale;

(ii) for letting out on hire;

(iii) for any purpose for which any charge is made or any remuneration is received; or

(iv) for sale of any produce thereof;

(e) carry on, allow to be carried, on, in or upon any premises-

(i) any of the trades or operations connected with trade specified in part IV of Schedule 'P'

(ii) any trade or operation which in the opinion of the commissioner is dangerous to life, health or property, or likely to create a nuisance either from its nature, or by reason of the manner in which, or the conditions under which, the same, is or is proposed to be carried on;

(f) carry on within the city or use any premises for the trade or operation of a carrier;

(2).....

(3).....

(4).....

(5).....

(6).....

9) Admittedly, the impugned notice, which is subject matter of challenge, was never issued under Section 521 of the Act. But the original show-cause notice dated 06.01.2015 was under Section 521, to

which an explanation was submitted on 08.01.2015. But no orders are passed till date. Strangely another notice came to be issued under Section 452(1) and 461(1) of GHMC Act and closure orders came to be passed under Section 452(2) of the GHMC Act, for violating the trade license.

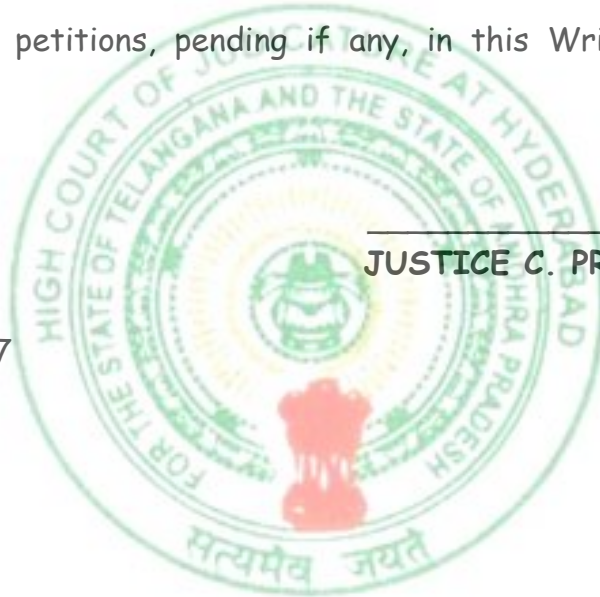
10) Though the impugned order refers to construction of building in violation of the sanction plan, but no action was taken as the civil court is ceased of the matter. The material placed before this court would show that the petitioner herein filed O.S.No.1905 of 2015 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad, and in I.A.No.614 of 2015 the court ordered maintenance of *status-quo*. Therefore, no action was taken though notice was under Section 452 of the Act.

11) Insofar as the other grounds are concerned, the show-cause notice, which was issued to the petitioner do not refer to violation of any conditions of license or usage of the premises causing nuisance to public. As stated earlier, the notice was issued under Section 452(1) and 461(1) of the GHMC Act, which refers to raising of building in violation of the sanctioned plan. If there was any violation of condition of license or if the activities of the petitioner were causing nuisance, the appropriate procedure would be to give a notice under Section 521 of the GHMC Act. Things would have been

different had the impugned order referred to the notice dated 06.01.2015 and the explanation submitted to the said notice on 08.01.2015. Hence, this Court is of the view that the order under challenge warrants interference and the same is liable to be set-aside.

12) Accordingly, the Writ Petition is allowed. However, the respondent/authorities are directed to forthwith take steps by issuing appropriate notice to the petitioner, call for his explanation and then pass orders in accordance with law at the earliest. No costs. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

Dt: 21.03.2017
GM



JUSTICE C. PRAVEEN KUMAR