

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.34672 of 2017

ORDER:

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

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 4th respondent in passing the impugned notice vide Rc No.C/35/2017 dated 12.09.2017 by directing the petitioner to shift the A4 shop of the petitioner from one place to another within 15 days without taking any explanation of the petitioner straight away passed the notice is illegal, arbitrary and against the principles natural justice and also violation of AP Excise Act and Rules thereunder by setting aside the same and consequently direct the respondents not to interfere into the petitioner business and to pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. I have heard the submissions of *Sri Chintapalli Srinivas*, learned counsel appearing for the petitioner, and of the learned Government Pleader for Prohibition (AP) appearing respondents 1 to 5. I have perused the material record.

3. The grievance of the writ petitioner is that by the impugned notice, dated 12.09.2017, he was directed to select new premises to shift A4 shop within fifteen days from the receipt of the said notice and that the said notice was issued on oral instructions of the Project Officer, ITDA, Rampachodavaram, and a complaint allegedly received

from the public without disclosing the details of the complaint. The impugned notice was issued without any prior notice to the petitioner and without giving an opportunity to the petitioner to submit his explanation and an opportunity of hearing; further, the said notice was issued by Prohibition & Excise Superintendent, who is not competent so to do; as, Sub-rule (3) of Rule 13 of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005, envisages that only Commissioner, Prohibition & Excise, is competent to issue such a notice, but not the Prohibition & Excise Superintendent.

4. Learned Government Pleader does not dispute either the facts or the legal position obtaining.

5. Having regard to the facts & submissions, the Writ Petition is allowed, as prayed for. However, this order shall not preclude the authority concerned from taking appropriate action, if required under facts and as per law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

31st October, 2017
RAR

M. SEETHARAMA MURTI, J

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31-10-2017

