

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.3139 of 2018

ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Municipal Administration for respondent No.1 and Sri M.D.Saleem, learned Standing Counsel for respondent No.2 from the written instructions and perused the prayer in the writ petition with supporting affidavit and other material on record.

2. The prayer in the writ petition reads as follows:

“.....to issue a writ, or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing Encroachment notice dated 25.01.2018 directing the petitioners to remove the constructed iron sheet sheds within 7 (Seven) days from the date of receipt of the notice without following procedure as illegal, improper, unjust, arbitrary, contrary to Rules prescribed in A.P. Municipalities Act, 1965 and violation of principles of natural justice and pass such other or further orders as this Hon'ble court may deem fit and proper in the circumstances of the case.”

3. It is the supporting affidavit averment of one of the 18 petitioners on behalf of all of them that they are educated unemployed and in continuous possession and enjoyment of the bunks lying near Bangalore Bus Stand Circle, Madanapalle, Chittoor District, by running flower business and some technical works and there is no public inconvenience much less to the traffic from their continuation of the bunks and doing petty business for livelihood therefrom and the respondents are trying to take law into their hands without following

due process of law despite writ petition W.P.No.12424 of 2011 filed earlier as the interim orders granted therein and finally disposed of on 10.06.2014 directing the respondents to follow due process of law by giving opportunity of hearing to the petitioners. It is the submission that the impugned notices dt.25.01.1918 served on 27.01.2018 issued by the 2nd respondent to remove the encroachments within 7 days therefrom are without following due procedure contemplated by the Municipalities Act.

4. The written instructions of the learned Standing Counsel for the 2nd respondent/Municipality are that the bunks are adjacent to bus stand and causing obstruction to free approach of public to reach bus stand and some unruly elements are using the bunks for illegal activities under the guise of unemployed youth of running petty business and even notices served, some of the petitioners refused to receive the notices and there is also a pre-litigation case pending before the Mandal Legal Services Authority, Madanapalli to remove the encroachments covered by the shops of the petitioners in question for causing public nuisance and thereby the petitioners are not entitled to the relief.

5. The only prayer in the Writ Petition is the so called attempt by the respondents to evict the petitioners is without due process of law. In fact, nobody can encroach the public road or thoroughfare or access more particularly near the bus stand from the road and vice versa.

6. Having regard to the above, the Writ Petition is disposed of directing the petitioners to submit their written explanation within 15 days from today and the 2nd respondent shall consider the same and to pass appropriate orders after hearing them and communicate the same to them. In the meantime, there shall not be dispossession of the petitioners.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

2nd February 2018

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Dr. B. SIVA SANKARA RAO, J

