

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.6649 OF 2018

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Home (TG) appearing for respondent Nos.1 and 2 and the learned Government Pleader for Revenue (TG) appearing for respondent Nos.3 and 4.

2. An order passed by the Sub-Divisional Executive Magistrate & Revenue Divisional Officer, Keesara Division, Medchal Malkajgiri District, Telangana State, respondent No.3 herein, *vide* proceedings No.C/52/2018, dated 23.01.2018, authorizing the Tahsildar, Uppal Mandal, respondent No.4 herein, to seize the property to prevent the petitioner from production of gutka products is under challenge in this writ petition.

3. Learned counsel for the petitioner attacks the said order mainly on the ground that the impugned order is totally in violation of the provisions of Section 133 of the Code of Criminal Procedure, 1973. In elaboration, it is further maintained by the learned counsel that respondent No.3 passed the impugned order without adhering to the provisions of Section 133 Cr.P.C. According to the learned counsel, the impugned action is also in violation of the principles of natural justice.

4. Section 133 Cr.P.C. deals with the conditional order for removal of nuisance. Section 133(1) Cr.P.C. reads as under:-

“(1) Whenever a District Magistrate or a Sub - divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order -

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.”

5. It is very much obvious from a reading of the above provision of law that before passing a final order, it is incumbent on the part of the Sub-Divisional Magistrate to afford opportunity to the person likely to be affected by such action. In the instant case, the impugned order does not refer to anything with regard to providing opportunity to the petitioner herein. On the said ground alone, the impugned order is liable to be set aside and the matter requires reconsideration.

6. For the aforesaid reasons, the Writ Petition is allowed, setting aside the order passed by the Sub-Divisional Executive Magistrate & Revenue Divisional Officer, Keesara Division, Medchal Malkajgiri District, Telangana State, respondent No.3 herein, *vide* proceedings No.C/52/2018, dated 23.01.2018. However, it is open for respondent No.3 to take action strictly in accordance with law.

It is also made clear that all issues are kept open to be adjudicated. There shall be no order as to costs.

7. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 13.03.2018
AMD



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