

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.1174 of 2009

O R D E R:

This writ petition is filed seeking to declare the action of respondent No.3-Kavali Municipality in destroying the brick kilns and bricks of the petitioner situated in an extent of Acs.3.00 of land in Survey No.2017/1 of Kavali Bit-I, Sri Potti Sri Ramulu Nellore District, on 24.01.2009, as illegal and arbitrary.

The petitioner states that he was running a brick kiln in the above said land taken on lease for the past six years. His grievance is that despite this Court directed the respondents not to interfere with his brick manufacturing, vide order, dated 16.01.2009, in WPMP No.717 of 2009 in W.P.No.593 of 2009, without issuing any notice, respondent No.3 authorities on 24.01.2009, at the instance of rivals in the business, highhandedly destroyed the brick kiln causing loss to a tune of Rs.30,00,000/-.

While admitting the writ petition on 29.01.2009, this Court issued interim direction to the respondents not to demolish and not to interfere with the business of the petitioner.

In the counter-affidavit, respondent No.3 states that the petitioner is running the brick kiln in question in the midst of the town; that the Municipality had received number of complaints about the air pollution caused due to emission of smoke and ash by the petitioner's brick kiln; that the averment that the

petitioner's brick kiln is 2.00 k.m. away from the residential area is not correct; that the order in W.P.No.539 of 2009 came to be served on the authorities only on 24.01.2009 at 11.30 a.m., by which time, with the help of the police, the petitioner's brick kiln was demolished and that the petitioner had suffered loss of Rs.30,00,000/- is denied as there is no material to prove the same.

Heard learned counsel for the petitioner and learned Standing Counsel for the Corporation.

It is to be noted that though it is the allegation of the petitioner that no notice was issued to him prior to demolition of his brick kiln, respondent No.3 stated in the counter-affidavit that a legal notice, dated 16.01.2009 was got issued to the petitioner for removing his brick kiln as it is causing health hazards to the people in the vicinity. It is also to be noted that even if the petitioner is running the brick kiln, without obtaining any permission, the respondent authorities may take action against the petitioner, but, however, they cannot resort to demolish the brick kiln.

The petitioner claimed a sum of Rs.30,00,000/- towards damages, but there is no material produced by him in proof of the same. Though in the counter-affidavit, respondent No.3 asserted that the cost of the soil is Rs.50,000/-, at this stage, it is not possible for this Court to assess the damage suffered by the petitioner.

For the aforesaid reasons, the Writ Petition is allowed, leaving it open to the petitioner to approach the civil Court, if he is otherwise advised, for damages. However, respondent No.3 is directed to pay costs of Rs.5,000/- (Rupees Five Thousand only) to the Chief Minister's Distress Relief Fund (Kerala) within two weeks from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

Dt:20.09.2018

kdl

CHALLA KODANDA RAM, J

