

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.10115 OF 2015

ORDER:

This Writ Petition is filed with the following prayer:

“...to issue an Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in demolishing the petitioner's Tailor Shop admeasuring 25 Sq. yards in premises No.359, Lal Bazar, Tirumalgiri, Secunderabad falling in Sy.No.121 of Tirumalgiri Village and Mandal, Hyderabad District, as illegal, arbitrary, malafide, violative of Principles of natural justice, capricious and null and void, and consequently direct the 2nd respondent to restore the possession of the shop by paying compensation for reconstruction of the same...”

2. It is the case of the petitioner that he was in occupation of premises No.359, Lal Bazar, Tirumalgiri, Secunderabad, which falls in Sy.No.121 of Tirumalgiri Village and Mandal in an extent of 25 square yards. Pursuant to issuance of G.O.Ms.No.166, Revenue (Assn.Pot) Department, dated 16.02.2008, for regularization of encroachment by way of dwelling houses on Government lands in urban areas of Hyderabad on payment of market value, the petitioner applied for the regularization by paying the necessary fee. Thereafter, the revenue officials executed a registered deed dated 06.09.2011 vide document No.1263/2011 in favour of the petitioner regularizing the aforesaid premises. Subsequently, the petitioner has constructed a shop and doing tailoring business. While so, the second respondent, without any notice, came to the shop of the petitioner on 06.04.2015 with her staff and demolished the shop of the petitioner.

3. Respondent No.2 filed a counter-affidavit stating that the Secunderabad Cantonment Board is the owner of the land, wherein

the petitioner is running a tailor shop unauthorisedly and that the petitioner has illegally constructed the shop on the property of the Secunderabad Cantonment Board. It is further stated that to facilitate the free flow of the traffic and to provide obstacle free ingress and egress to the people of the locality, the encroachments have been removed and a black top road was laid and that in such process, they demolished the shop of the petitioner.

4. It is necessary to refer Section 248 of the Cantonments Act, 2006 which deals with power of the authority to stop erection or re-erection or to demolish the structures and it reads as under:

“248. Power to stop erection or re-erection or to demolish:- (1) Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under section 184, and may in any such case or in any other case in which the Board considers that the erection or re-erection of a building is an offence under section 184, within twelve months of the completion of such erection or re-erection in like manner direct the alteration or demolition as it thinks necessary of the building or any part thereof, so erected or re-erected:

Provided that the Board may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable:

Provided further that the board shall not, without the previous concurrence of the Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building on land which is not under the management of the Board.

(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the order under section 181 sanctioning the erection or re-erection has been suspended by the Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 52, and shall in any such case in like manner direct the demolition or alteration, as the case may be, of the building or any part thereof so erected or re-erected where the Officer Commanding-in-Chief, the Command, thereafter

directs that the order of the Board sanctioning the erection or re-erection of the building shall not be carried into effect or shall be carried into effect with modifications specified by him:

Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence of the demolition or alteration of any building which has been erected or re-erected prior to the date on which the order of the Officer Commanding-in-Chief, the Command, has been communicated to him.

5. A perusal of the above provision, it is clear that the Board has the power to issue a notice to the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building, if the Board considers that such erection or re-erection is an offence under Section 184, and also to direct the alteration or demolition of the building or any part thereof. In the present case, nowhere in the counter-affidavit the second respondent stated that notice has been issued to the petitioner under the aforesaid provision before demolishing the shop. Hence, the action of the second respondent in removing the structures of the petitioner without issuing any notice is violative of principles of natural justice.

6. In the circumstances, the Writ Petition is disposed of declaring the action of the second respondent in demolishing the shop of the petitioner is unjust, arbitrary and violative of principles of natural justice. Insofar as seeking a direction to the respondents to restore the possession of the shop by paying compensation for reconstruction of the same is concerned, the same cannot be granted in the proceedings under Article 226 of the Constitution of India, however, liberty is given to the petitioner to seek appropriate

remedy before the competent Court of law. As a sequel, the miscellaneous petitions pending if any shall stand closed. No order as to costs.

T.AMARNATH GOUD, J

Date: 20-12-2018
TJMR

