

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.29894 of 2018

ORDER:

Earlier when the petitioners herein approached this Court by way of filing W.P.No.23581 of 2014, this Court in W.P.M.P.No.29533 of 2014 passed interim order on 20.8.2014. The said order reads as under:

“Heard the learned counsel for petitioners and Smt.A.Deepthi, learned Standing Counsel for Respondent Nos.1 and 2.

Identical notices dated 7.8.2014 were issued to petitioners invoking Section 495 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short “the Act”) alleging that each of the petitioners had unlawfully erected/projected/ set-up/shed/building at premises No.5-4-203/59 situated at Ranigunj, Secunderabad by encroaching the road margin/Government Land/pavement/ footpath which is causing obstruction and inconvenience to the vehicular traffic and pedestrians. The petitioners were directed to voluntarily remove/vacate the encroachment within 3 days on receipt of the said notice.

The learned counsel for petitioners states that none of the petitioners had occupied the footpath or pavement or road margin and only 2 members of the 1st petitioner association have establishments facing the main road and rest of them are not touching any road or pavement causing obstruction to vehicular traffic and they are located far from the main road. He therefore contends that no road or pavement has got effected and the impugned notices have been issued without applying mind and for extraneous reasons. He also pointed out that petitioners have given an undertaking in para-11 of the affidavit filed in support of the Writ Petition that if any road margin or occupation of footpath or pavement is found, the GHMC can remove the same without further reference to the petitioners.

The learned Standing Counsel for Respondent Nos.1 and 2 shall get instructions.

Having regard to the contentions of the petitioners and in view of the undertaking given by the petitioners, there shall be an interim direction to respondents not to interfere with petitioners peaceful

possession and enjoyment of their business premises until further orders”.

2. According to the learned counsel for the petitioners, the said writ petition is pending. The Respondent Corporation issued a notice under Sections 452(1) and 461(1) of HMC Act, 1955, asking the petitioners to show cause as to why the subject constructions should not be removed/alterd or pulled down. The petitioners submitted explanation on 9.8.2018 (acknowledged by the office of Deputy Commissioner on 18.8.2018). Eventually, the Respondent Corporation issued the impugned order under Section 452(2) of HMC Act, 1955. According to the learned counsel for the petitioners, the said order is highly illegal, arbitrary, and in violation of principles of natural justice.

3. On the other hand, it is submitted by the learned Standing Counsel appearing for Respondent Corporation Sri Chatla Madhu that since the petitioners did not produce the sanctioned plan and documents, the impugned action cannot be faulted. The submission of explanation in response to the notice under Sections 451(1) and 461(1) of HMC Act, 1955 is not in dispute. A perusal of the impugned order dated 17.8.2018 issued by the Respondent Corporation under Section 452(2) of HMC Act, 1955 reveals that the Respondent Corporation did neither refer nor adverted the contents of the explanation offered by the petitioners.

4. Having called for the explanation and having acknowledged the same, this Court does not find any justification on the part of the Respondent Corporation in totally ignoring the contents of the explanation. On this ground alone, the impugned order cannot be sustained and in the considered

opinion of this Court, the matter requires re-consideration by the Respondent Corporation.

5. For the aforesaid reasons, the writ petition is allowed, setting aside the orders passed by the Respondent Corporation under Section 452(2) of HMC Act, 1955 bearing No.203/TPS/W.No.5/CIR-18/NZ/GHMC dated 17.8.2018. It is open for the petitioners to submit documents, if any, in support of their case within a period of one week from the date of receipt of this order and the Respondent Corporation shall pass appropriate orders afresh, in accordance with law, after considering the explanation offered by the petitioners herein. Till the said exercise attains finality, no coercive action shall be taken by the Respondent Corporation in respect of the subject property. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 21.8.2018
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A.V.SESHA SAI, J

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