

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.32336 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a writ of Mandamus declaring the impugned order, dated 13.07.2018, of the 1st respondent bearing No.L&O/423/2018 as illegal, arbitrary, violative of the principles of natural justice and contrary to the procedure contemplated and consequently set aside the same.

2. I have heard the submissions of Sri U.D.Jai Bhima Rao, learned counsel appearing for the petitioner, of the learned Government Pleader for Revenue appearing for the 1st respondent and of the learned Government Pleader for Home appearing for the 2nd respondent. I have perused the material record.

3. Learned counsel for the petitioner submitted that if not the writ of Mandamus, an appropriate writ order may be granted to the petitioner.

4. The grievance of the writ petitioner is this: 'A case in Crime No.323 of 2017 was registered by the Station House Officer, Raidurgam Police Station, against certain accused under Sections 3,4 & 5 of Immoral Traffic (Prevention) Act, 1956. The said accused incidentally happened to be the occupants of the property bearing Flat No.102, Dhatri Homes, Panchavati Colony, which belongs to the petitioner. During the course of investigation into the said crime, since the subject flat is the scene of offence, after ten months from the date of registration of the crime, basing on the information of the 2nd respondent – Inspector of Police, L & O, Raidurgam, the 1st respondent issued

show cause notice, dated 02.04.2018 to show cause why the subject flat shall not be attached for improper use of the same. In response to the said notice, the petitioner submitted his explanation, on 03.04.2018. However, the 1st respondent, without proper appreciation and consideration of the explanation of the petitioner and without hearing the petitioner, passed the impugned order ordering eviction of the occupier-cum-owner of the premises within seven days from the receipt of the said order. While passing the impugned order, no opportunity of personal hearing is given to the petitioner and the petitioner's representation is not considered and the impugned order has come to be passed for not producing any document showing the title of the petitioner in respect of the subject property, though the investigating officer himself in the crime proceedings has stated that the petitioner is the owner of the property and cited him as a witness. In that view of the matter, the order is unsustainable and is liable to be set aside. Therefore, the present writ petition is filed.'

5. Learned Government Pleaders for Revenue and Home supported the impugned orders, *inter alia*, stating that the petitioner ought to have produced some documentary evidence or his title deed to show that he is the owner of the subject property and that since the petitioner failed to do so, the 1st respondent - sub-Divisional Magistrate is justified in passing the impugned order.

6. I have given earnest consideration to the facts and submissions. A careful perusal of the order impugned shows that the objections/explanation, of the petitioner were not referred to and that admittedly no opportunity of

personal hearing is provided to the petitioner. As rightly contended by the petitioner, had the officer concerned given an opportunity of personal hearing, the petitioner could have produced the necessary documents at such hearing and could have established his case, which is undisputed by the investigating officer.

7. Having regard to the facts and submissions, this Court finds that the writ petition can be disposed of granting appropriate relief and with directions.

8. Accordingly, the Writ Petition is allowed in part and the impugned order is set aside and the case no.L&O/423/2018 is remitted to the 1st respondent – Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Rajendranagar Division, Attapur, for disposal afresh in strict accordance with the procedure established by law, however, after affording an opportunity of personal hearing to the petitioner and to file documents, if any. It is needless to state that the said officer shall complete the necessary exercise in the above regard within one month from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

14.09.2018

Vjl