

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.44064 of 2017

ORDER.

This Writ Petition is filed seeking the following relief:

“.... to issue a writ, order or direction more particularly one in the nature of Writ of *Mandamus* declaring the action of respondent No.2 in issuing notice, dated 3.11.2017, under Sections-405 & 406 of HMC Act, 1955, without obtaining any explanation from the petitioner and without giving any reasonable time to the petitioner, as highly illegal, arbitrary, against the principles of natural and also violative of Articles-14, 19 and 21 of the Constitution of India and consequently, to set aside the same in the interests of justice.”

In this Writ Petition, the challenge is to the notice, dated 03.11.2017, issued by respondent No.2, whereby the petitioner was called upon to remove the encroachments made on the road and footpath without obtaining any permission from the respondent-authorities.

In the impugned notice, it is *inter alia* stated that by encroaching the road and footpath, the petitioner is running a Tiffin Center in the name and style “Vara Lakshmi Tiffin Center” and therefore, the petitioner is liable for prosecution under the provisions of Sections-405 and 406 of the Hyderabad Municipal Corporation Act, 1955 (for short ‘the Act’).

Having received the afore-stated notice, the petitioner approached this Court by way of this Writ Petition seeking the afore-stated relief *inter alia* stating that the said Tiffin Center is not being run on the foot path, but is being run at a place beyond the footpath and that there are similar Tiffin Centers on either side of the same road and that action is initiated only against the petitioner's Tiffin Center by discriminating him.

Learned Standing Counsel for respondent No.2-Municipal Corporation, on instructions, would submit as follows:

“A notice under Sections-405 and 406 of the Act has already been issued to the petitioner, though such a notice is not necessary for removal of the encroachments made on the roads and foot path. Without giving any explanation to the said notice, the petitioner filed the present Writ Petition. Therefore, the Writ Petition is liable to be dismissed. Even the photographs filed by the petitioner along with the Writ Petition reflect that the said Tiffin Center is being run on the footpath.”

Having regard to the facts of the case and the submissions of the learned counsel, the Writ Petition is disposed of with the following directions:

- (1) The petitioner is directed to submit his explanation to the impugned notice, dated 03.11.2017, within two weeks from the date of receipt of a copy of this order.
- (2) On the petitioner giving such explanation, respondent No.2 shall consider and dispose of the same in strict accordance with the procedure established by law within two weeks thereafter and communicate the decision taken thereto to the petitioner within a week thereafter.
- (3) Till the afore-stated exercise is completed, no coercive steps shall be taken against the said Tiffin Center of the petitioner.

As a sequel, the Miscellaneous Petitions, if any, pending shall stand dismissed.

JUSTICE M.SEETHARAMA MURTI

03rd January 2018

DR