

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.13952 of 2019 & 32551 of 2018

ORDER ::

The petitioner resides in a building situated at a premises situated in Vijaya Nagar Colony, Hyderabad. The petitioner alleges that the egress and ingress to the said building premises is going to be blocked if the proposed temporary construction of the pandal by the 4th respondent-Association to celebrate this season's Vinayaka Chathurthi festival. That there are about six families residing in the building including small school going children as well as aged persons. The respondent-authorities previously have been granting permission for construction of a temporary pandal in front of the petitioner's building for celebrating the festival for about 9 to 11 days. That during these days the whole area of the public road would be closed and in the process the entry gate of the building would be blocked and it would be difficult for the petitioner and other members of the building to go out and it is nothing short of a house arrest. That under Section 31 of the Hyderabad Police Act, it is a statutory duty of the official respondents to maintain public order on public roads when such roads are permitted to be blocked or obstructed for such pandals or functions of worship. Representations made in that behalf to the authorities did not yield any concrete results, the present writ petition is filed seeking for appropriate directions, in the interest of justice.

02. Counter affidavit is filed by the 3rd respondent-Inspector of Police wherein it is stated that pursuant to the representation received from the petitioner, inspection of the locality was done and on enquiry it was ascertained that the organizers of the 4th respondent-Association are not blocking the road completely much less the main entrance gate of the petitioner; as alleged by the petitioner and that there is passage for the petitioner and other inmates of the building for ingress and egress and also passage for the general public to move from one side to other side. That as an abundant caution, the 3rd respondent instructed the organizers of the 4th respondent-Association not to block the road and not to cause any inconvenience to the petitioner as well as the general public in the colony. That any permission for temporary construction of the pandal for the up coming festival 2019 would be granted in accordance with the provisions of the Act and the rules made thereunder; any violation of terms of permission/license will attract action or will suggest the organizers to shift to any other alternate place for construction of the pandal.

03. The Secretary of the 4th respondent-Association also filed counter affidavit stating that the members of the association are organizing the Vinayaka Chathurthi festival in the colony and they have been celebrating the festival collectively for the last several years at the same place by construction of temporary pandal. That the proposed pandal would in no way

obstruct the entrance gate of the petitioner's building and there would be sufficient passage for ingress and egress to the building. It is denied that the pandal would block the petitioner's main gate. It is also denied that people gather at large numbers through out the day and night and cause pollution and nuisance damaging the public road by throwing waste materials like plastic glass etc. It is stated that devotees gather for performing Puja in the evening from 6 to 9 pm and at no point of time they cause any nuisance or throw any waste material on the road, but celebrate the festival with devotion, dedication and enthusiasm. That most of the residents of the colony participate, with devotion, and offer, voluntarily their donations/offerings to celebrate the festival. That the pandal proposed to be laid is an internal service road of the colony which is having other connecting road without disturbing the passage of the residents of the colony. That they will abide by the terms of permission granted by the authorities and celebrate the festival with devotion without causing any inconvenience to any person of the colony.

04. Reply affidavit is filed by the petitioner to the counter affidavit filed by the 4th respondent-Association wherein it is stated that the assertion of the 4th respondent that there two entrances to the building is incorrect as the other entrance is entrance to the parking area which is at a depth of 5 feet and cannot used as ingress and egress into the building. That entrance to the parking area is not an entrance to her house.

The petitioner controverted the counter averments made that the pandal in no way blocking the main gate of the building of the petitioner. That the petitioner has a fundamental right to live decently and with dignity and the 4th respondent has no right to create noise, obstruction or pollution, even in his own premises with or without permission, which would traverse beyond his precincts and cause nuisance to the neighbours and others.

05. Heard Sri S.S. Prasad, learned senior counsel appearing for the petitioner and the Sri T.Surya Karan Reddy, learned senior counsel appearing for the 4th respondent-Association and learned Government Pleader for Home for the respondent authorities.

06. In this writ petition, the petitioner's apprehension is that the proposed action on the part of the 4th respondent-Association to construct temporary pandal would block the main gate entrance of her building which infringes her right to free access to the public roads and; is it open for the 4th respondent to create noise pollution and nuisance on the premise of celebration of a religious festival on the ground that necessary permission was obtained from the concerned authorities.

07. A perusal of the sketch map filed by the 4th respondent-Association filed along with the counter affidavit it is apparent that upon construction of the pandal, a passage of nearly 4 ft.

would be left for the petitioner and other members of the colony including members of the building for ingress and egress through that road.

08. Learned senior counsel appearing for the 4th respondent submits that necessary permission for construction of the temporary pandal would be obtained from the Police and other local authorities and celebrations will be held subject to the terms of such permissions and sufficient space will be kept open for ingress and egress and no inconvenience would be caused to the petitioner on such count. Learned senior counsel appearing for the petitioner drawn my attention to the photographs filed by the petitioner along with writ petition, which pertains to the year 2018 celebrations, wherein it is evidenced that the passage is almost blocked.

09. In such view of the matter, upon full construction of the temporary pandal, the passage from the petitioner's building *i.e.* main entrance gate facing the pandal, sufficient passage would be maintained for ingress and egress to the building of the petitioner. The petitioner also should not lose sight of the fact that Vinayaka chaturthi is one of the major Hindu festivals which is celebrated to mark the birthday of God Vinayaka/Lord Ganesha and the members of the 4th respondent-Association and other members of the colony be not deprived of their fundamental right so enshrined under

Part III of the Constitution of India and more particularly under Articles 25 and 26.

10. The Hon'ble Supreme Court in a Constitutional Bench judgment in ***Himat Lal K. Shah vs. Commissioner of Police***, (1973) 1 SCC 227) at para 69 held thus:-

“Freedom of assembly is an essential element of any democratic system. At the root of this concept lies the citizens right to meet face to face with others for the discussion of their ideas and problems—religious, political, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perform a function of vital significance in our system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it shall be grounded on adequate information and discussion. Public streets are the “natural” places for expression of opinion and dissemination of ideas. Indeed it may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly.”

11. It is also worthwhile to refer to some of the observations made by the Constitution Bench of the Hon'ble Supreme Court in ***Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj vs. State of Gujarat*** [(1975) 1 SCC 11] at para 20. The Supreme Court observed thus:-

“No rights in an organized society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests....”

It was further observed that.....(para 31)

“A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole.”

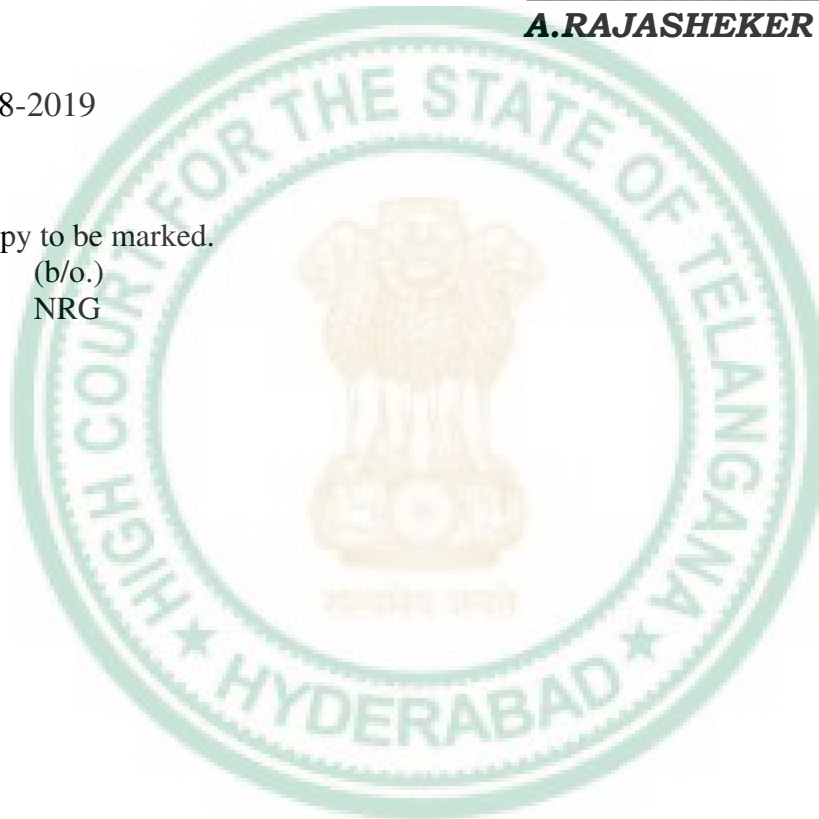
12. In the instant case, as things stand, permission for construction of pandal has not been granted by the authorities, in the circumstances, it is open for the respondent-Police to consider the case of the 4th respondent to accord permission and in case accords permission for temporary construction of pandal, the terms of the permission would necessarily include to leave sufficient passage in width for ingress and egress for the building of the petitioner and objection of petitioner needs to be considered in this regard. The 4th respondent is also to be self-sensitized and do the needful without any complaint from any quarter and celebrate the festival peacefully. It is expected that in this festive season the petitioner and the members of the 4th respondent-association conduct the Puja without any hard feelings since the petitioner is also stated to be an ardent devotee.

13. With the above directions, the writ petition is accordingly disposed of. In view of the orders passed in WP No.13952 of 2019, no further orders are required to be passed in the WP No.32551 of 2018 as it has become infructuous and accordingly disposed of. As a sequel to the disposal of writ petitions, miscellaneous petitions, if any, pending in the writ petitions also shall stand disposed of. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated:29-08-2019
NRG

Note: LR copy to be marked.
(b/o.)
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