

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 25597 OF 2019

ORDER :

This writ petition is filed challenging the action of respondents 2 and 3 in issuing notice dt.14.10.2019 vide Roc.No.G/7027/2019, directing the petitioner to remove the existing renovated structure of temple though the temple is in existence for the past more than 90 years, as illegal and arbitrary.

Learned Counsel for the petitioner submits that the subject temple is in existence for the last more than 100 years; that the petitioner has not constructed any new temple; and that without issuing any prior notice, straight away, the impugned notice dt.14.10.2019 is issued which is in violation of principles of natural justice. He also submits that the respondent authorities have initiated action against the petitioner basing on the direction in WP.No.20871 of 2019, dt.24.09.2019, though the petitioner in this writ petition is not a party to the said writ petition. He further submits that the temple is in existence much prior to formation of lay out.

The 4th respondent in this writ petition filed WP.No.20871 of 2019. Learned Counsel appearing for 4th respondent in this writ petition who is also counsel for writ petitioner in WP.No.20871 of 2019 submits that there is no record to show that the subject temple is in existence for the last 100 years and that the petitioner has not filed even a piece of paper in the writ petition to that affect. Even the

photographs filed in this writ petition show that the subject temple is constructed recently and more so there is no permission granted for construction of the said temple.

Sri Praveen Kumar, Learned Standing Counsel appearing for respondents 2 and 3 while reiterating the said submissions of 4th respondent states that since there is no permission granted for construction of the temple; that the said temple is constructed in the middle of the road; and that since this Court granted interim direction on 24.09.2019 to the respondents in WP.No.20871 of 2019, notices were issued. He also submits that when the road is being encroached, no prior notice is required to be issued as per Section 405 of the Hyderabad Municipal Corporation Act, 1955 (*for short 'the Act'*).

In this case it is to be seen that the petitioner has not even filed a piece of paper to show that the temple is in existence for the last 100 years and no permission is granted regarding construction of the said temple.

This Court on 24.09.2019 granted interim direction in WP.No.20871/2019 which reads as follows;

“There shall be an interim direction to the respondents to initiate action pursuant to the representations dated 29.01.2019 and 04.05.2019 and ensure no construction is made without there being permission even if it is a religious structure. It is made clear, whether the lay out is approved or not is also immaterial as no religious structure can be brought into existence without there being permission therefore under the Municipal Laws.”

Section 405 of the Act reads as follows;

405. Commissioner may without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of the Act: The Commissioner may, without notice, cause to be removed__

a) any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature, or any fixture which shall be erected or set up in or over any street, any open channel, drain, well or tank contrary to the provisions of this Act.”

In view of the above and in view of the interim order granted by this Court in the earlier writ petition No.20871 of 2019, basing on which present impugned notice is issued, and since the petitioner has not filed any document to show that the subject temple is in existence for the last more than 100 years or atleast for a considerable period, I do not see any infirmity in the impugned notice.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

02.12.2019

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