

THE HONOURABLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION No.7063 of 2014

ORDER:

Heard learned counsel for the petitioners as well as learned Government Pleader for Home and learned Standing Counsel appearing for the 3rd respondent-Municipality.

2. The prayer sought in the writ petition is as under:-

“... to issue a writ or order or direction more particularly one in nature of writ of Mandamus declaring the action of the respondent No.6 and 7th respect of interfering in carrying on the business of Pan shop and petty tea stall by the petitioners/Street Vendors at abutting to compound wall of Government Area Hospital Bhainsa at a sufficient distance to the Main Road Bhainsa opposite Bus stand Bhainsa, Bhainsa Municipality and destroying their temporary stalls and also doing harassment and preventing petitioners/street vendors from carrying on their business (Street vending) with dignity for their livelihood is illegal arbitrary, and violative of Article 19 (1) (g) and 21 of the Constitution of India and particularly against the “NATIONAL POLICY ON URBAN STREET VENDORS, 2009” and against the judgment rendered by the Honourable Apex Court in Maharashtra Ekta Hawkers Union and another V/s Municipal Corporation, Greater Mumbai and others, consequently direct the 6 and 7th respondents not to interfere in the Street Vending business of the petitioners/street Vendors in carrying on pan shops and petty tea stalls at abutting to compound wall of Government Area Hospital Bhainsa at a sufficient distance to the Main Road Bhainsa opposite Bustand Bhainsa Municipality, Adilabad, District Adilabad and to pass such other and further order or orders, as this Honourable Court may deem fit and proper in the circumstances of the case.”

3. The 3rd respondent filed a counter-affidavit denying the averments made in the affidavit filed in support of the writ petition and contended *inter alia* that the petitioners are not the street vendors and they are not doing business for the last 30 years near the bus

stand, as there was no bus stand at that place 30 years back. The land on which the petitioners are occupied belongs to the 3rd respondent Municipality being road margin. Since there were encroachments on the roads in Bhainsa Town and since they were creating lot of problems causing traffic congestion, the said encroachments were removed by the Government. However, there are some open spaces which are left out, the petitioners are taking advantage of the same and trying to occupy the said open spaces. If the places shown by the petitioners are allowed to be occupied, there will be heavy traffic congestion and it will cause lot of problems for the incoming and outgoing buses and it will lead to cause accidents. In fact, such incidents were happened in the past. It is also further mentioned in the counter-affidavit that since the petitioners are not occupying the land, there is no need to issue notices to them. In fact, the shops are abutting the compound wall of Government Area Hospital, Bhainsa, and if the petitioners are allowed to do their business, it will lead to un-hygienic conditions and will also cause serious health hazards to the patients visiting the hospital. It is further stated in the counter-affidavit that the petitioners are trying to grab the open sites and the judgment cited by them is not applicable to the petitioners and the facts of the case on hand.

4. Though a counter-affidavit filed by the 3rd respondent with specific averments, the petitioners have not filed any reply affidavit to rebut the facts/allegations made in the counter-affidavit. This aspect

goes to show that the averments made in the counter-affidavit are un-rebutted and the same are binding on the petitioners.

5. From the perusal of the contents of the affidavit filed in support of the writ petition as well as counter-affidavit filed by the 3rd respondent, it appears that there is a dispute with regard to the open space occupied by the petitioners as to whether it is open space or a government land. The disputed question of fact cannot be decided in a writ filed Article 226 of the Constitution of India. More so, when a counter-affidavit is filed with detailed facts and when the same are not rebutted, they are deemed to be admitted. In these circumstances, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

6. Accordingly, the writ petition is dismissed.

Miscellaneous petitions pending, if any, shall stand dismissed.

No order as to costs.

22nd November 2019

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P. KESHA VA RAO, J