

HIGH COURT FOR THE STATE OF TELANGANA

* * *

WRIT PETITION No.39902 of 2018

Between:

1. G. Srinivas S/o late G. Ramachandram

.....Petitioner

AND

1. The State of Telangana, and 5 others

.....Respondents

Date of Judgment pronounced on : 19.03.2019

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAMWRIT PETITION No.39902 of 2018

% 19.03.2019

1. G. Srinivas S/o late G. Ramachandram

... Petitioner

Versus

\$ 1. The State of Telangana, and 5 others

.... Respondents

< GIST:

> HEAD NOTE:

! Counsel for the Petitioner : Sri C. Hanumantha Rao

^ Counsel for the Respondents : Sri Sampath Prabhakar,
Standing Counsel for GHMC

? CASES REFERRED:

1. W.P.No.8070 of 2015

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.39902 of 2018

ORDER:

In this writ petition, the petitioner challenges the Endorsement vide Notice No.01/TPS/Cir-20/GHMC/2018 dated 31.10.2018.

The sum and substance of the petitioner's case is that he had taken on lease the land in an extent of 200 sq. feet out of plot bearing Nos.151, 152, 153, 178, 179 and 180 comprising of 1196 sq. yards Type B in Survey No.206 situated at Kondapur Village, Sriram Nagar Colony, Serlingampally Mandal, Ranga Reddy District, from its original owners i.e., respondents 5 and 6 herein, by paying Rs.10 lakhs towards deposit to respondents 5 and 6; and established an Ice-Cream Parlour in the said premises by making a temporary construction. The lease period is for 60 months and the Ice-cream parlour is not located on the road margin. As respondents 5 and 6 are interfering with his possession and enjoyment of the premises, he filed O.S.No.133 of 2018 before the V Additional Junior Civil Judge, Kukatpally, and the suit is pending. As things stood thus, the respondents-Municipal Corporation, without following due process of law, at the instance of respondents 5 and 6, started interfering with his possession and enjoyment of the property, by threatening to demolish the construction. In the circumstances, the petitioner approached this Court by filing W.P.No.25722 of 2018 and the same was disposed of by holding that the petitioner's enjoyment of the property shall not be interfered with, except by following due procedure prescribed under law. Thereafter, a notice came to be issued to the petitioner on 31.08.2018 alleging that he encroached road margin and constructed an ice-cream parlour, and the land in which the ice cream parlour was constructed belongs

to the Municipality as the land was surrendered by respondent No.5 (Smt.T.Anasuya), in view of the condition imposed by the Municipality for granting construction permission to respondent No.5. Against the said notice dated 31.08.2018, the petitioner submitted his explanation on 08.09.2018 setting out all factual details. However, without considering his explanation in proper perspective, the respondents passed the impugned order. Aggrieved by the same, the present Writ Petition is filed.

A detailed counter-affidavit is filed by the Corporation asserting that earlier respondent No.5 had obtained permission for construction of Cellar + stilt + 5 upper floors in the land admeasuring 1196 square yards, out of which, she surrendered the land admeasuring 278.58 square meters to GHMC for the purpose of road widening from 60 to 120 feet from Botanical Gardens to Hyderabad Central University Depot (HCU Depot i.e. old Bombay road), and therefore the surrendered land has become the property of Municipality. It is further stated that the ice cream parlour constructed by the petitioner falls within the said surrendered portion of the property. The allegation of respondents issuing a notice on 31.08.2018 at the instance of respondents 5 and 6 is denied. It is further stated that as the land of 278.58 square meters was surrendered to the Municipality by respondent No.5, the question of initiating land acquisition proceedings does not arise. As the petitioner has no manner of right over the property, he being an encroacher on the road margin, the construction made by him is objectionable and unauthorised and therefore requires to be removed.

The 5th respondent filed her counter affidavit stating that the petitioner is neither the owner nor tenant of the subject premises. She states that she is the absolute owner of different extent of plots in Survey No.206 in Sriram Nagar Colony, Kondapur, Serilingampally Mandal under GHMC, having

acquired the same through registered documents. She further states that she developed the land and obtained permission from GHMC vide File No.4311/29/01/2015/HQ dated 05.09.2015 for construction of Cellar, Stilt + Upper Floor; and she surrendered the land in which the subject premises is situate to the Municipality as per rules, and thereafter started construction as per the permission granted by the Municipality. She asserts that she had never let out the subject premises to the petitioner for running the alleged Ice Cream Parlour and that she never received any amount muchless the amount of Rs.10,00,000/- towards an alleged deposit for leasing the premises. She states that the 3rd respondent issued notice to her on 03.01.2018 under Section 452(2) of the GHMC Act, 1955, with respect to the unauthorised construction of RCC room falling within the road widening portion, and she replied to the notice on 10.01.2018. She further states that the petitioner himself filed O.S.No.217 of 2017 but subsequently he had withdrawn the suit and thereafter he filed another suit in O.S.No.133 of 2018 seeking permanent injunction and no interim orders were passed and the suit is pending. She further asserts that the petitioner filed W.P.No.25722 of 2018 and this Court disposed the writ petition on 31.07.2018 with a direction to the 3rd respondent not to resort to demolition without issuing notice to the petitioner. It is asserted that the petitioner had intentionally not made the 5th respondent a party to W.P.No.25722 of 2018, thereby the petitioner played fraud on the Court, and the 3rd respondent issued notice dated 31.08.2018 to the petitioner calling for explanation, solely on the directions of this Court in W.P.No.25722 of 2018, and as a matter of fact, the petitioner is not entitled to receive any such notice as he is neither the owner nor the tenant of the subject premises.

Heard learned counsel for the petitioner and the learned Standing Counsel for the respondents Corporation.

Learned counsel for the petitioner submits that the petitioner is covered under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (for short, 'the Act'), and therefore the Act protects the petitioner as he is carrying out the business of selling Ice Cream on the road margin, and therefore the respondents authorities cannot evict him without recourse to the provisions of the Act. Learned counsel relies on the judgment of this Court in *R. Prashanti D/o R. Krishnaiah v. State of Andhra Pradesh*¹ in support of his contention.

Learned counsel further asserts that, as a matter of fact, no obstruction is being caused to free flow of traffic on account of running an Ice-Cream Parlour in the subject premises; and the same is evident from the photographs filed by the petitioner. Summing up his contentions, learned counsel submits that there are a large number of similar constructions on the road margin however at the instance of respondents 5 and 6, the petitioner alone is targeted for eviction and therefore such discrimination towards the petitioner amounts to violation of Article 14 of the Constitution of India.

Having regard to the respective submissions, prima facie, the provisions of the Act do not apply to the case of the petitioner. Merely as the petitioner chose to encroach road margin and run an ice cream parlour by making construction over 200 square feet of land, even as per his own admission, and particularly in the light of the specific pleadings and documents filed by respondent No.5, by no stretch of imagination, entitles the petitioner to be categorised as a street vendor and the petitioner does not fit into the definition of a Street vendor, notwithstanding the definition of

¹ W.P.No.8070 of 2015

a street vendor being wide. The purport and object for which the Act came to be enacted, does not envisage in its fold making of any permanent establishment on a road margin, that too an establishment of 200 square feet like in the present case. The photographs filed by the petitioner would disclose that it is an establishment with an air conditioning facility. That being so, the very nature of occupation of the petitioner i.e., running an Ice Cream Parlour in an established premises of 200 square feet, would not fit into the provisions of the Act, and therefore would not entitle the petitioner to plead protection under the provisions of the Act.

Admittedly, the petitioner had encroached road margin which is forming part of the property over which the Municipal Corporation has acquired rights by virtue of surrender of the said property by respondents 5 and 6, in consideration of construction permission effected in favour of respondent No.5 for making a multi-storeyed construction. Further, the assertion of the respondent authorities that the proposed road widening from 60 to 120 feet is being taken up in the surrendered portion is not in dispute. Merely the explanation of the petitioner has not been taken into consideration by the respondent authorities neither entitles nor confers any right on the petitioner to continue to occupy the road margin. Further, merely because the respondent authorities have not initiated any proceedings against allegedly similarly situated persons in the same street does not in any way confer any right, much less a vested right, on the petitioner to continue to encroach and squat on the public property.

That being said, the argument of the learned counsel for the petitioner, that there are other similar occupants of road margin who are also required to be evicted by the Municipality but are not being evicted and the authorities are targeting only the petitioner, is required to be taken seriously.

It is needless to mention that this aspect of the matter shall receive the attention of the 2nd respondent, and the 2nd respondent shall take necessary steps to ensure that all the encroachments in the road margin are removed, so as to ensure smooth flow of traffic, especially in a busy locality like Kondapur. The writ petition is devoid of merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed. However, considering the request of the learned counsel for the petitioner to grant some reasonable time for removal of erected structures and move out the material, I deem it appropriate to direct the respondent authorities to grant four weeks time for removal of erected structures and move out the material. It is made clear that if erected structures are not removed and material not moved out on or before 25th April, 2019, the respondent authorities shall be entitled to take appropriate action, if necessary, by taking help of law enforcing agency.

No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

CHALLA KODANDA RAM, J

19th March 2019

Note: Issue C.C. today
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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



WRIT PETITION No. 39902 OF 2018

19th March, 2019

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