

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

THURSDAY, THE TENTH DAY OF OCTOBER,

TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE SMT JUSTICE KIRANMAYEE MANDAVA

WRIT PETITION NO: 23119 OF 2024



Between:

1. M/s Viragoo Restro Bar, Rep by the Proprietor, Smt Maddipati Sireesha, D/o. Soma Sundara Rao, Situated at Sy. No. 329/5A, Kapuluppada, Ward-4, Zone-1, Bheemli, Visakhapatnam.
2. Smt. Maddipati Sireesha, D/o Soma Sundar Rao, Aged about 41 Years, R/o D.No.25-85/84, B-D3, Gayatri Nagar, Road No.4, PM Palem, Vishakhapatnam-53004

...Petitioners

AND

1. The State of Andhra Pradesh, Rep. by its Principal Secretary, Department of MA & UD, Secretariat, Velagapudi, Amaravati, Guntur District.
2. The Greater Visakhapatnam Municipal Corporation, Vishakhapatnam, Rep by its Commissioner. Vishakhapatnam.
3. The Zonal Commissioner, Zone-1, Bheemili, Greater Visakhapatnam Municipal Corporation, Vishakhapatnam

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ or order or direction more particularly in the nature of Writ of Mandamus declaring the action of the Respondents more particularly the action of Respondent Nos.2 and 3 herein in issuing Notice No. 1/2024 dated 03.10.2024, under Section 635 of the GHMC Act, 1965,

directing the Petitioner herein to submit various documents pertaining to the ownership and permissions of the building situated in Sy.No. 329/5A as being illegal, arbitrary, unjust without Jurisdiction, Without application of Mind, contrary to the provisions of the Greater Hyderabad Municipal Corporation Act, 1955, and violative of Articles 14,19(1)(g), 21 and 300A of the Constitution of India and Consequently, set aside the Notice No. 1/2024 dated 03.10.2024 issued by the Respondent No.3.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Stay all further proceedings in respect of Notice No. 1/2024 dated 03.10.2024, issued by the Respondent Nos.2 & 3, Pending disposal of WP 23119 of 2024, on the file of the High Court.

IA NO: 2 OF 2024 ✓

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Direct the Respondents not to interfere with the lawful business being undertaken by the Petitioner in the subject property situated in Sy.No.329/5A of Kapuluppada Ward No. 4, Zone-1, Bheemili, Visakhapatnam District or take any other coercive steps against the Petitioners, Pending disposal of WP 23119 of 2024, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri N Ashwani Kumar, Advocate for the Petitioners and of Government Pleader for the respondent Nos.1 to 3, the Court made the following

ORDER:

“Heard the learned counsel for petitioners and the learned Government Pleader appearing for respondents 1 to 3.

It is contended by the learned counsel for petitioners that the impugned order dated 03.10.2024 issued under Section 635(2) of the GHMC Act, 1955, is not in accordance with the said provision in as much as, under the provisions, the Municipal authority can ask for only the ownership documents or link documents and to the extent specified under Section 635(1) of the Act, viz., the nature of his interest therein and the name and address of any other person having an interest therein, whether as freeholder, mortgagee, lessee or otherwise, so far as such name and address is known to him.

He contends that apart from these particulars as provided under Section 635(1) of the Act, Commissioner could call for no other information. He contends that vide the impugned proceedings, the Commissioner has asked for following particulars:

1. Building permissions, if any of existing structures and bar in Sy.No.329/5A of Kapuluppada.
2. NOC from APCZMA authorities for the said structure.
3. Ownership documents and link documents and upto date Encumbrance certificate of the said site.
4. NOC from MoFFCC (Ministry of Environment Forest and Climate Change).
5. NOC/Permissions from the other line Department.

which, the learned counsel contends that, is not in accordance with the provisions of the Act.

The learned counsel for petitioners further contends that the basis for issuance of notice under Section 635 of the Act, dated 03.10.2024, is the news paper report said to have been published on 29.09.2024 and 03.10.2024 and a representation of one Sri Peethala Murthy Yadav dated 13.09.2023. It is stated that the copies of the same have not been made available to the petitioners.

The learned counsel in support of his contention that on the basis of news paper reports hasty orders should not be passed, relies on the decision of this Court in W.P.No.24734 of 2021 and batch and the decision of the Honourable Apex Court in the case of *Ravinder Kumar Sharma vs. State of Assam and others*¹.

The learned counsel for the petitioners further submits that to the notice dated 03.10.2024, he has submitted his objections to the respondent on 07.10.2024. However, as noted from the paper book filed along with the writ petition no such explanation has been made part of the record. The said submission of the learned counsel for the petitioners is placed on record.

Per contra, the learned counsel for the respondents contends that the petitioners establishment is located in a residential area and the building permission was also granted for residential purpose and not for commercial purpose of running bar and restaurant and he prays time to file counter.

¹(1999) 7 SCC 435

Post on 04.11.2024 for counter of the respondents, till such time, the respondents shall not take any coercive measures pursuant to the notice dated 03.10.2024."

SD/- N.NAGAMMA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

For ASSISTANT REGISTRAR

To,

1. The Principal Secretary, State of Andhra Pradesh, Department of MA & UD, Secretariat, Velagapudi, Amaravati, Guntur District.(by Special Messenger)
2. The Commissioner, Greater Visakhapatnam Municipal Corporation, Vishakhapatnam, Vishakhapatnam.
3. The Zonal Commissioner, Zone-1, Bheemili, Greater Visakhapatnam Municipal Corporation, Vishakhapatnam (Addressee nos.2 & 3 by RPAD)
4. One CC to Sri N Ashwani Kumar, Advocate [OPUC]
5. Two CCs to GP for Municipal Administration and Urban Development, High Court of Andhra Pradesh. [OUT]
6. One CC to Sri J.Dilip Kumar, Standing Counsel [OPUC]
7. **One spare copy**

CVSS

HIGH COURT

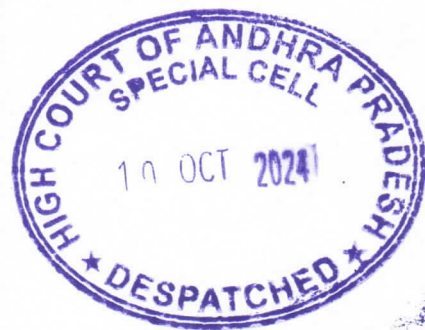
KM,J

DATED:10/10/2024

POST ON 04.11.2024

ORDER

WP.No.23119 of 2024



DIRECTION