

**(2010) 08 AP CK 0070**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Appeal No. 114 of 2010**

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|---------------------------------|----|------------|
| Mohd. Ilyas Khan and Others     | Vs | APPELLANT  |
| Abdullah Bin Hussain and Others |    | RESPONDENT |

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**Date of Decision :** 02-08-2010

**Acts Referred:**

Hyderabad Municipal Corporation Act, 1955 — Section 405

**Citation :** (2010) 5 ALT 132

**Hon'ble Judges :** V.V.S. Rao, J;Ramesh Ranganathan, J

**Bench :** Division Bench

**Advocate :** Sharad Sanghi and Associates, for the Appellant; Nazir Ahmed Khan, for Respondent No. 1, R. Rama Chandra Reddy, SC for GHMC for Respondent Nos. 2 and 3 and G.P. for Home for Respondent Nos. 4 and 5, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.V.S. Rao, J.—The first respondent is the owner of the premises bearing No. 3-5-784/A/2 to 6 situated at King Koti, Hyderabad. The same is let out to the appellants for running a Hotel named M/s. Hi-Line Hotel & Bakery. There is a footpath behind the Hotel. It is alleged that the appellants encroached upon the footpath and put up Haleem Bhattis (ovens) along with tin sheds. The first respondent, therefore, gave a representation on 28.08.2009 to the Officials of the Greater Hyderabad Municipal Corporation (GHMC), in vain. He then filed the writ petition seeking a direction to GHMC and its Officials to cancel appellants' Hotel licence. The writ petition was opposed, inter alia, on the ground that the civil suits are pending between the parties and the writ petition is a ruse to defeat lessees' rights. During the pendency of the writ petition, the Assistant City Planner inspected the area and submitted a report on 08.10.2009. As per the said report the appellants encroached on the footpath for sometime and made temporary constructions, but on the date of inspection, they were removed. Taking the same into consideration, the learned single Judge closed the writ petition observing that GHMC and its Officials should remove any

encroachments on the footpath, in case the appellants encroach in future. Aggrieved, Hoteliers are in appeal.

2. Counsel for the appellants submits that the allegation that the appellants encroached upon the footpath behind the Hotel is not true, and that only during the holy month of Ramzan, temporary hearths for preparation of Haleem are put up without causing any inconvenience to the pedestrians. These contentions are refuted by the Counsel for the first respondent and the Standing Counsel for GHMC.

3. The law of the streets does not enable any citizen to encroach upon footpath nor squat on the footpath for the purpose of business, much less, put up Haleem Bhattis (hearth or oven). Further, u/s 405 of the Greater Hyderabad Municipal Corporation Act, 1955 (the Act), it shall be the duty of the Commissioner to remove encroachments on the roads and keep the footpaths free from such encroachments. Any lenience by the Officials amounting to breach of law cannot be countenanced by the Court of judicial review.

4. Section 405 of the Act reads as under.

405. Commissioner may without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of 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;

(b) any stall, chair, bench, box, ladder, board or shelf, or any other thing whatever placed, deposited, projected, or suspended, in, upon, from or to any place in contravention of this Act;

(c) any article whatsoever hawked or exposed for sale in a public place or in any public street in contravention of the provisions of this Act and any vehicle, package, box or any other thing in or on which such article is placed.

(emphasis supplied)

5. A plain reading of the provision would show that the Commissioner is empowered to remove anything erected, deposited temporarily or permanently or hawked on the street. The extent and scope of such power has been elucidated by learned single Judge in Jubilee Hills Labour Welfare Association and Others Vs. Municipal Corporation of Hyderabad and Others, as under:

Section 405 of the Act empowers the Commissioner to remove anything, which is erected, deposited or hawked or exposed for sale in any street in contravention of the Act, without issuance of any notice. The deviation from the normal procedure of issuance of notice appears to be on account of the fact that no individual has any right to occupy or squat on a road or its margins and

pavements. The requirement of issuance of notice, be it under the statute or under the principles of natural justice, is for the purpose of adjudication of the claims or rights of the affected persons. Since no claim needs to be adjudicated as to the right of a person who squats on the street or its margins and pavements, the Commissioner is vested with the power to curb such unauthorized and illegal activities and clear the places without the necessity of issuing any notice.

6. The hazards created by illegal occupations on the footpath and the duty of the Corporation in such a situation has been noticed by this Court as follows:

One of the basic purposes of constituting a local authority, be it the Municipal Corporation, Municipality or Gram Panchayat, is to ensure that the public amenities are properly provided for and maintained. It is not only the right of the concerned local authority to clear unauthorized encroachments on the roads and road margins, but is also their duty to take steps in this regard. The right of the local authorities to take steps in the interest of proper utilization of the public amenities, ensuring proper security to the users of the roads and its margins and pavements, ensuring proper hygienic conditions in the locality, etc., was recognized by the Supreme Court in its various decisions in clear terms. The question as to whether the continued occupation of a road or road margin possess any threat to public safety, hygienity or causes congestion to the traffic has to be decided by the Corporation itself. The fact that certain individuals were permitted to use the road margins at a time when such necessities were not felt does not confer any right in such persons. The opinion formed by the Corporation as to the feasibility or otherwise in permitting such use of road margins is not justiciable... Having regard to the Scheme of the Act and the pronouncements of the Hon'ble Supreme Court, it emerges that the Municipal Corporation has right to remove and clear illegal encroachments on the roads, road margins, pavements and footpaths, as provided for u/s 405 of the Act.

7. To the same effect are the observations of another learned single Judge in Mohd. Zakiuddin and Others Vs. Commissioner/Special Officer, Municipal Corporation of Hyderabad and Another, We agree with the observations made in the two judgments referred to hereinabove.

8. In Sodan Singh v. New Delhi Municipal Committee AIR 1989 SC 1988 it was held that, "the primary object of building roads is undoubtedly to facilitate people to travel from one point to another...a street is a road or public way in a city, town or village, a way over land set apart for public travel in a town or city is a street, no matter by what name it may be called. If a way is free to all people it is a high way." The Constitution Bench in Sodan Singh further held.

It has been sometimes argued that since a person is entitled to the user of every part of a public street, he cannot be deprived of the use of any portion thereof by putting up of any obstruction. This proposition in its extreme form cannot be accepted without subjecting it to several restrictions. A similar argument was

pressed before the Madras High Court in the case of M.A. Pal Mohammed and Others Vs. R.K. Sadarangani and Others, based on the provisions of the Madras City Municipal Corporation Act, 1919, and was rightly repelled by pointing out that since the pavement is also included within the expression "street", a member of the public relying upon the aforesaid proposition can insist on his right to walk over a flower-bed or structure erected by the public authorities for regulating traffic which will be wholly impractical. The authorities are duty bound to locate post boxes, fire hydrants with water tanks, milk booths, bus or jutka stands, rubbish bins etc., in appropriate places in a public street and it would be preposterous to hold that this cannot be done as somebody may insist on keeping every inch of the street available for actual passage....

9. In view of the statutory obligation, the GHMC cannot allow any businessman or hotelier to carry on business, much less, by constructing ovens/hearths (Haleem Bhattis) on the footpath, nor allow to put chairs and tables for the use of customers. We direct the GHMC not to allow any such Haleem Bhattis anywhere in Hyderabad which would cause hindrance to the general public from moving on the footpath from one place to another.

9. The Writ Appeal is, therefore, dismissed. There shall be no order as to costs.