

IN THE COURT OF THE XIII ADDITIONAL DISTRICT JUDGE, GAJUWAKA

**Present :- *Sri Rayasam Siva Kumar, B.Com., B.L.,
XIII Addl. District Judge, Gajuwaka***

MONDAY, THIS THE 8th DAY OF APRIL, 2019

C.M.A. 1/2018

Between:-

Thokada Micro Self Employed Work Shops Welfare Association, Thokada, Autonagar, Visakhapatnam.

.....Appellant/Petitioner/Plaintiff

And:-

1) Greater Visakhapatnam Municipal Corporation Rep. By its Commissioner, Visakhapatnam.

2) The Zonal Commissioner, Vth Zonal Office, Greater Visakhapatnam Municipal Corporation at Gajuwaka, Visakhapatnam.

3) Thokada Grama Parikshana Samithi, Regd. No.126 of 2015, Rep. By its President Boddada Narayana Dhana Mahalakshmi Naidu.

.... Respondents/Defendants

**CIVIL MISCELLANEOUS APPEAL WAS FILED BY THE
APPELLANT/PETITIONER/PLAINTIFF UNDER ORDER 43 RULE 1 OF CPC
AGAINST THE ORDER PASSED BY LEARNED PRINCIPAL SENIOR CIVIL
JUDGE, GAJUWAKA ON 3rd JULY 2018 IN I.A. No.89/2017 IN
O.S.No.38/2017**

Between:-

Thokada Micro Self Employed Work Shops Welfare Association, Thokada, Autonagar, Visakhapatnam.

..Petitioner/Plaintiff

And:-

R1) Greater Visakhapatnam Municipal Corporation Rep. By its Commissioner, Visakhapatnam.

2) The Zonal Commissioner, Vth Zonal Office, Greater Visakhapatnam Municipal Corporation at Gajuwaka, Visakhapatnam.

3) Thokada Grama Parikshana Samithi, Regd. No.126 of 2015, Rep. By its President Boddada Narayana Dhana Mahalakshmi Naidu.

..Respondents/Defendants.

This Civil Miscellaneous Appeal is coming on 28-03-2019 before me for final hearing in the presence of Sri B. Murali Krishna Raju, Smt. K.Satya Vani and Smt. M. Surya Kala, Advocates for Appellant/Petitioner/Plaintiff and of Sri V. Kodanda Ramayya, Advocate for 1st Respondent/1st defendant, Sri G. Appa Rao, Advocate for 3rd Respondent/3rd defendant and 2nd respondent is called

absent and set exparte and having stood over for consideration till this day, this court delivered the following :-

ORDER

2. The unsuccessful petitioner in I.A. 89/2017 in O.S.38/2017 on the file of Principal Senior Civil Judge, Gajuwaka filed this Civil Miscellaneous Appeal aggrieved by the order of Learned Principal Senior Civil Judge, Gajuwaka dismissing the petition.

3. The parties are referred by me even after as they were arrayed before the trial court

4. **The material averments stemming from the affidavit filed in support of the petition are :-**

(a) Petitioner is a registered association under Registration No.321 of 2015 under the Societies Registration Act being represented by its President. There are 74 members in the petitioner's association who are running a small scale workshops which are ancillary units to the big industries like Visakhapatnam Port Trust, Hindustan Shipyard Limited, BHEL, Etc. All the Industries of petitioner's members are almost a single man operated units just like village industries. Mostly these units manufacture the small and tiny spare parts like nuts, bolts, shafts, sprockets, etc., for small vehicles like cycles etc. These units do not require industrial infrastructure like industries that are existing in the APIIC Industrial area. These units do not create any emission of pollution nor do they pollute the water or create sound pollution. They do not even use heavy electrical installation. These units of the petitioner's members have been existing since 20 years which never caused any problem for the villagers around it.

(b) The land in which the petitioner members units were located was acquired by the APIIC long back with vast areas of other lands for the purpose of industrial establishments. Subsequently, on the representation made by some of the villagers, the land covered by Sy. No.50/1, and 50/2 of

Thokada Village of Chinagantyada was withdrawn from the acquisition. In fact, the land covered by Sy. Nos. 50/1, 50/2 and 51/1 and 51/2 is located in the middle of industrial area where the members of the petitioner's association established very small workshops and the other area which is in the surrounding of said land was totally developed by A.P. Industrial Infrastructure Development Corporation and many big and large scale industries were established and running the same round the clock. The land owners whose land was released from the acquisition proceedings sold their respective lands to the members of the petitioner's association. Some of the sale deeds executed in favour of the members of the petitioner's association clearly show the existence of small workshops in the respective sites since 20 Years. The petitioner's association prepared a layout plan and filed before the court.

(c) After purchasing their respective sites, the petitioner's association members constructed buildings by obtaining plan approval from the then Gajuwaka Municipality and some of them established their small workshops in the part of their respective buildings. They have been paying trade tax to the Municipal authorities till date. Thus, the 1st respondent recognized the usage of the small workshops of the petitioner members by imposing heavy licence fee of about Rs.10,000/- to Rs.40,000/- per annum for just a unit in 200 Square Yards. Respondents 1 and 2 also levied property tax to the concerned units by considering it as a commercial place, but not as a residential units which itself shows that the activities of the members of the petitioner's association do not cause any disturbance either by air or by water or by sound to the residential units of that area. The electricity service connections were also obtained for their respective units and they have been paying electrical charges under commercial category to the concerned authorities for more than 20 years.

(d) While things stood thus, some rowdy elements with their henchmen with a view to collect the money illegally from the members of the petitioner's association named them as Thokada Praja Samrakshana Seva Samithi started threatening and demanding money to pay them, failing which, they threatened that they report to the various authorities. In their course of action, they addressed a letter dated 17.12.2012 to the District Collector, Visakhapatnam, making copies to various authorities including Pollution Control Board and APIIC. In response to such false petition, the authorities concerned made enquired and inspected the units of members of petitioner's association and found that there is no truth in such complaint and did not initiate any action. The said people having understood that the threatening letter/complaint did not work out, kept quite for some time and again came up with another fictitious and a false self styled society name 'Thokada Praja Parirarakshana Committee' which is nothing but 3rd respondent herein. The 3rd respondent committee ultimately succeeded in getting issued a notice on some of the members of the petitioners association under section 449 of HM Act. The villagers of Thokada having come to know that the respondents 1 and 2 issued notice to the members of the petitioner's association on the false complaint given by the said men, they have collectively sent representation to the respondents dated 15.05.2015 which was signed by the more than 50 residents of the village stating that the workshops are not at all creating any problems to the residents and further said that those units have been creating 400 to 500 jobs to the residents and thereby requesting the respondents not to create any problems to the units of the petitioner's association members. Moreover, the workshops are being closed by 6 pm., on every day whereas the other major and big industries running round the clock. Basing on the representation of the villagers, the respondents 1 and 2 did not find any reason to take further action on the said notice issued them.

(e) When the matter stood thus, the petty politicians who did not succeed in their all attempts for getting money illegally from the members of the petitioner's association took assistance of the rowdy elements and once again pressing the members of the petitioner's association and started to create problems. In their course of action, they influenced the Respondents 1 and 2 to take steps to close the units of the petitioner's association members. On their pressure, the officials of the respondents 1 and 2 started frequent visits to the workshops of the members of the petitioner's association and threatened that they will not allow to run their industrial unless they meet their illegal demands. Further threatened that they are preparing notices to them to close the units. On 02.02.2017, the officials of the Town Planning Department came to the petition schedule property and gave an ultimatum that they will take severe steps on the schedule property if the members of the petitioner's association failed to comply their demands within 3 or 4 days. As 1st respondent is mighty organization can easily put their threat into action, if the members of the petitioner's association did not comply their demands. Hence, having no other go, the petitioner's association is constrained to file this suit for their redressal. In these circumstances, if temporary injunction is not granted in favour the petitioner's association, they will suffer irreparable loss and injury. Hence, the application.

5. The 1st respondent remained exparte. The 2nd respondent filed his separate counter. On the request of 3rd respondent, the trial court added it to the petition as 3rd respondent as per orders in I.A. 573/2017 dated 24.11.2017. The 3rd respondent also filed his counter.

6. Thus, R.2 and R.3 filed their counters denying the material averments of the petitioners and also putting them to the strict proof and interalia contending as follows:

(a) The suit as well as the petition filed by the petitioner's association by suppressing the real facts. In fact, the industrial units were situated in residential area as per the master plan of GVMC which are contrary to the Master Plan zoning regulations. There are 74 active industries now working in the area covered by S.Nos.50/1 and 50/2 of Thokada village which is classified as residential area as per Master plan of the GVMC. The areas earmarked for partly residential use and partly water body use in the sanctioned master plan of VUDA. Since, 2015, the GVMC has taken all possible steps against the unauthorizedly established units basing on the complaint submitted by the residents of Thokada Villagers by addressing letter to the authorities concerned of APIIC, District Industrial Centre and the APEPDCL Authorities for necessary action from their end as such industrial units were established in violation and contrary to the rules in vogue. Further the GVMC had issued a notice under section 441 and 461 of HMC Act, 1955 dated. 01.09.2016 calling upon the managements of the said Industrial Units to show cause as to why action shall not be taken against the unauthorized commercial activity in residential area. The notices were served on the management on Industrial units on 02.09.2016. After receipt of said notices, some of the members of the alleged petitioner's association approached the Hon'ble High Court and filed writ petition in W.P.Nos.39285/2016, 39316/2016, 39318/2016 and 39320/2016 against the respondent GVMC and others. All the said writ petitions were disposed off by a common order in W.P.No.39320/2016 on 20.12.2016 by holding that the order dated. 01.09.2016 be treated as notice under section 443 of GHMC Act and the petitioner were given one week time for submission of explanation. If such explanation are submitted, the competent authority of GVMC shall consider said explanation and pass appropriate orders within a further period of two weeks. And in case no explanation is filed, the order dated. 2.9.2016 revives and it is open to GVMC to take further course of action in the matter. It was further held that in case of filing the explanation within time fixed, no

coercive action shall be taken against the petitioners till final decision is made as directed above. However, the petitioners in Writ petitions failed to comply the directions of the Hon'ble High Court within the time stipulated. On that 2nd respondent issued speaking orders vide Rc.No. 1017/2016/ACP-V dated 20.01.2017 keeping in view of the grievance complaints submitted by the 3rd respondent. As per the direction of the Hon'ble High Court calling upon the management of petitioner's association to vacate the premises under their occupation by shifting the industrial units within 7 days from the date of receipt of speaking order, failing which appropriate action will be initiated in pursuance of powers conferred under section 461 A of HMC Act, 1955 without any further notice. The said orders were served on the parties on 27.01.2017.

(b) At that stage, the petitioners have submitted their explanation on 19.01.2017 to the GVMC. Therefore, it is clear that the so-called explanation stated to have submitted by the petitioner is not within the time stipulated by the Hon'ble High Court as per the orders dated 20.12.2016. In those circumstances, 2nd respondent corporation issued a notice under section 461-A of HMC Act, 1955 dated 06.02.2017 calling upon the petitioners to close their units which are established within the residential area of Thokada Village, within 24 hours from the date of receipt of the notice. Except Ch. Prakash Rao of Lakshmi Durga Engineering works, the remaining three persons refused to receive the notice. Hence, the notice served on the remaining three industries by way of substituted service affixing the notice on the wall of premises on 07.02.2017.

(c) The Hon'ble MLC in LCQ No. 9499(starred) have questioned the action taken by the respondent corporation against the unauthorized industries which were cropped up in Sy.No. 50/1 and 50/2 of Thokada Village and the same was forwarded to the 2nd respondent corporation by the office on Special Duty, MA & UD Department vide Memo No.460935/H2/2017-2,

dated. 01.02.2017 and the 2nd respondent corporation submitted reply in RC No. 1017/2016/ACP-V, dated. 2.3.2017.

(d) By suppressing all these facts, the petitioner members filed the suit as well as this petition to get ad-interim injunction orders from the Hon'ble Court. The 2nd respondent corporation has to take further action basing on their final notice dated 6.2.2017. Hence, it is clear that the petitioner members did not approach the court with clean hands, as such the petition is liable to be dismissed. 2nd respondent corporation had initiated prompt, possible and appropriate action on the complaint given by the 3rd respondent. In fact due to illegal and unauthorized activities of the members of the petitioner's association, the residents of Thokada village are suffering with noise pollution, air pollution and so also water pollution. That is the reason the Hon'ble High Court very specifically passed an order to initiate steps against the petitioner.

(e) Some of the members out of 74 units of the petitioner's association vacated their units after filing of the suit. In place of old units which were vacated after filing of the suit, 16 new units were inducted in the old premises. Then the 3rd respondent made a complaint to GVMC and on receiving the complaint, the 2nd respondent officials inspected the units physically and found that 16 new units were inducted while the above suit is pending in place of old units. Then immediately, respondents 1 and 2 issued notice under section 443 r/w 461 of HMC Act, 1955 vide Rc.No.1017/2016/ACP-V, dated 23.08.2017 to all the 16 new units calling upon to close their industries which was established in residential area within 7 days from the date of receipt of the notice. Though the notice was properly served, they did not choose to vacate the premises. Without vacating the premises, they had been given individual affidavits to GVMC and other Government authorities on oath that they are intended to vacate the workshops within 90 days and they are ready to pay incidental charges.

(f) Basing on the complaint lodged by the 3rd respondent, the officials of the AP Pollution control Board, Regional office, Visakhapatnam, inspected the areas on 01.06.2016 and conducted AAQ and Noise monitoring tests. In their inspection, it is recorded that the noise level is in the range of 88-94 Db(A) at SOURCE AND in the range of 68-71Db(A) which are exceeding the residential area standards i.e. 55 Db(A) and SPM value in the ambient air quality monitoring recorded at boundary of the industry on South side is 118.0 ug/m³ which is exceeding the ambient standard of 100 ug/m³.

(g) The AP Pollution Control Board, Regional Office, Visakhapatnam after thorough and careful consideration of all the material facts came to firm opinion that the Industries are operating without CFE/CFO of the Board and causing air pollution problems in surrounding area and issued show cause notice on 25.06.2016 vide show cause notice No.227/PCB/RO-Vsp/2015-1360. But when there is no satisfactory response, the Joint chief Environmental Engineer, AP Pollution Board, Zonal Office, Visakhapatnam, issued directions vide Closure Notice NO. 8021-VSP/PCB/ZO-VSP/2016-1002 dated 5.10.2016 under section 31(A) of the Air (Prevention & Control of Pollution) Amendment Act, 1987 to shift the industries within six months i.e. by 01.04.2017 and shall not carry out any operation at existing location from 01.04.2017 onwards and also shall not cause any air pollution/odour nuisance to the surrounding environment, failing which legal action will be initiated without any prior notice for the reasons stated above. In spite of such directions, the concerned industries did not comply the same. On that the AP Pollution Control Board issued a notice No.227/PCB/RO-VSP/2017-769, dated 27.06.2017 to two of the members in plaintiff association, referring the Supreme Court Judgment in W.P.No.375 OF 2012. When there is no response to the notice dated 27.06.2017, the Joint Chief Environmental Engineer, AP Pollution Control Board, Zonal Office, Visakhapatnam issued Closure order vide Closure Notice dated 8021-VSP/PCB/ZO-VSP/2016-638, dated

17.07.2017 under section 31(A) of the AIR(Prevention & Control of Pollution) Amendment Act 1987. After receiving closure order dt 17.07.2017, the 29th member of Plaintiff association vacated the industry. But 16th member of plaintiff association is still running industry with Diesel Generator as power supply was disconnected by APEPDCL.

(h) After receiving the application of one of the residents of Thokada village, GVMC issued an endorsement on 29.12.2014 vide RTI No.259/2014/ACP-V/41 stating that no permission has been accorded to anybody to run any Industry in Ward No. 59, Survey Nos. 50/1, 50/2, 50/7, 51/1 and 51/2.

(i) On receipt of application, the Commissioner, APIIC, Industrial Area Local Authority issued a letter on 17.07.2015 stating that no permission has been accorded to anybody to run any Industry in Ward No. 59 Survey Nos.50/1 and 50/2 as Thokada village did not cover under territorial limits of APIIC.

(j) By suppressing all the above facts, the petitioner's association filed this suit as well this application and obtained an ex parte interim injunction from the Honb'le Court and under the said ex parte injunction order, they are obstructing the Government authorities from initiating any action against them. Thus, the petitioner did not fulfill the three ingredients covered under Order 39 Rules 1 and 2 CPC. Therefore, they sought for dismissal of this petition with exemplary costs.

7. To prove their respective contentions, on behalf of the petitioner Exs.P1 to P49 and on behalf of the respondents Exs.R1 to R14 are marked in the trial court.

8. On perusing the material available on record, the court of Principal Senior Civil Judge, Gajuwaka dismissed the petition.

9. Aggrieved by the said order, the petitioner/plaintiff preferred the Civil Miscellaneous Appeal on the following grounds :

- (1) The decision of the trial court below is contrary to law, weight of evidence and the probabilities of the case.
- (2) The trial court failed to consider that there are 74 members in the plaintiff association and they are running very small work shops which are ancillary units to the big industries like Visakhapatnam Steel Plant, Hindustan Petroleum Corporation Limited, NALCO, Visakhapatnam Port Trust, Hindustan Shipyard Limited, BHEL, etc., manufacturing small components to such big industries, like nuts, bolts, shafts, sprockets etc., for small vehicle like cycles etc. These units do not require industrial infrastructure like industries and they are existing in the APIIC Industrial Area and the work shops are almost room like constructions and it is nothing but deemed approval of the defendants 1 and 2 and other authority i.e. District Industrial Center.
- (3) The trial court below failed to consider the aspect the units do not create any emission of pollution nor do they pollute the water. These units do not cause even sound pollution in that area. Further they do not even use heavy electrical installation. Even to notices were issued by the pollution authorities to the workshops of the members of the plaintiff except two members out of 74 members. Generally so many workshops like the workshops of the plaintiff are situated in the residential colonies and area because as they are not required industrial licences.
- (4) The trial court failed to observe that these units are existing since more than 20 years which themselves shows that these units never caused any problems for the villagers around it at any point of time. In fact many other residents of the village also have established such small units in it along with the plaintiff's association members.
- (5) There trial court has failed to observe that the plaintiff's members work shops are situated adjacent to the APIIC industrial area cover with Major Manufacturing Industries. The APIIC acquired the land covered under the plaintiff's work shops long back along with the APIIC industrial land. But on the representations of the villagers the Government re-conveyed the said land covered under plaintiff's workshops. Thereafter the villagers sold away the said re-conveyed land to the plaintiff's members knowing fully well that the land will be utilized for the purpose of workshops. In fact there are more than 500 villagers in Thokada Village and the said villagers never objecting for running of the workshops even the workshops are running since more than 20 years. This fact is well known to public including the defendants herein and hence the defendants have not public including the defendants herein and hence the defendants have not denied the same that the proceedings of the acquisition and re-convey the plaint schedule workshops land and therefore it is deemed to be admission.
- (6) The trial court failed to consider that the defendants 1 and 2 collecting work shops trade licence fees and also the property tax from the members of the plaintiff's association since more than 20 years. The plaintiff's workshops also got small scale industries registrations from District Industrial Center and also other

concerned authorities. The documents filed by the members of the plaintiff's association clearly shows that they are paying property tax, trade licence the defendants 1 and 2 since long time and sale deeds of the members of the plaintiff's association clearly shows that they have purchased the property long back. The members of the the plaintiff's workshops will not create any nuisance to the members of the 3rd defendant or to the public. Out of the 74 members 4 members filed writ petition before the Hon'ble High court and the Hon'ble High Court disposed of the sad writ petitioners with direction "to submit explanations to the defendants 1 and 2 within the 7 days and the defendants 1 and 2 shall consider said explanation and pass appropriate orders within a further period of 2 weeks if no explanation is filed, the order dated 02-09-2016 revives and it is open to GVMC to take further course of action in the matter. In the event of the petitioners filing the explanations within time fixed, no coercive action shall be taken again by the petitioners till final decision is made as directed above". But the said 4 members added in the association without intimating the said fact to the president of the association. After filing of the above said suit along with the petition for granting of temporary injunction in favour of them against the respondent/defendant, the president of the association came to know that the 4 members filed writ petitions against the defendant 1 and 2 on the file of the Hon'ble High Court. If the president of the plaintiff's association got knowledge about the above said writ petitions, he would have mentioned in the plaint and the petitions about filing of the writ petitions. The same thing submitted before the lower court for consideration. The writ petitioners have no knowledge which is vividly shows that there is no suppression of material facts in filing the suit and petition. Regarding acquisition of the said land by the APIIC and recovery of the land to the villagers of Thokada no dispute and the defendants also have not raised any question of acquisition and re-convey of land and it is clearly shows that it is an admitted fact by the defendant also known the said fact to the one and all of the villagers.

- 7) The trial court failed to consider that the 3rd defendant members are nearly 10 persons who have purchased the sites recently and started harassing the plaintiff's members and also demanding money from the members of the plaintiff's association illegally and unlawfully and they intentionally and wantonly formed the 3rd defendant association with a view to grab the money from the members of the plaintiff's association.
- 8) The trial court failed to observe that the defendants 1 and 2 have not filed any document to show that the workshops of the plaintiff's members will create any type of pollution and to cause harmful to the members of the 3rd defendant.
- 9) The trial court failed to consider the documents filed by the 3rd defendant did not show any type of pollution caused to the members of the 3rd defendant and harmful to them. The officials of the pollution control board have not issued any notice to the work shops of the members plaintiff's association at any point of time stating that the workshops of the plaintiff's association members are causing harmful to the members of the 3rd defendant association or any other persons in the locality. The pollution notice said to be issued by the pollution control board to the serial No.4 of plaint schedule does not contain the signature of the owner of the workshop and there is no clear particulars when they

measured and where they measured that too without giving notice to the owner of the particular workshop. Which is nothing but fabricated document. If really the officials of the pollution control board inspected the said workshop and measured the pollution and if they found any pollution as per the provisions of the pollution act they have to give advise to the concerned to take steps to control the pollution. Thereafter if the owner of the workshop failed to take steps, the officials of the pollution control board will issue notice to the owner of the workshop for appropriate action. Therefore, these circumstances it is clearly shows that the pollution certificate is fabricated. For sake of discussion the pollution certificate filed by the defendant No.2 is true it is applicable to the only to the concerned individual unit, but it is not applicable to the the all units. Hence, the impugned order is liable to be set aside.

10. I heard both sides. Both parties also filed their written arguments.

11. Now, the main point for my determination is **whether the order of learned trial judge is sustainable in law and on facts ?**

12. **Point:** In the above back drop of the case, learned counsel of petitioner adroitly submits in vehemence that the petitioner is the association which has been duly registered under the societies registration Act vide Registration No. 321 of 2015 and which is being represented by its president who is authorised to file the suit on behalf of the association and that there are 74 members in the petitioner's association and the members of the association are running very small (micro) workshops which are ancillary units to the big industries like Visakhapatnam Steel Plant, Hindustan Petroleum Corporation Limited, NALCO, Visakhapatnam Port Trust, Hindustan Shipyard Limited, BHEL, etc., and which are manufacturing small components to such big industries and that mostly these units manufacture small and tiny spare parts like nuts, bolts, shafts, sprockets etc., for small vehicles like cycles etc., and that these units do not require industrial infrastructure like industries that are existing in the APIIC, Industrial Area and they do not create any emission of pollution nor do they pollute the water or create sound pollution or consume heavy electrical power and that these units are existing or the last more than 20 years which itself shows that these units never caused any problems for the villagers around it.

13. To boot, learned counsel for petitioner adroitly submits in vehemence that the land in which the small workshops of the petitioner's association members established was acquired by APIIC long back along with vast area of other ends for the purpose of industrial establishments and that subsequently, on the representation made by some of the villagers the land covered by S.Nos.50/1, and 50/2 of Thokada Village of Chinagantyada revenue village of Gajuwaka Mandal, Visakhapatnam was withdrawn from the acquisition proceedings and that the land covered by S.No.50/1, 50/2 and 51/1 and 51/2 is located in middle of industrial area where the members of the petitioner's association established very small workshops and the other area which is surrounding this land was totally developed by Andhra Pradesh Industrial Infrastructure Development Corporation and so many big and large scale industries were established which run around the clock and that the land owners whose land was released from the acquisition proceedings sold their respective lands to the members of the petitioner/ appellant association having full knowledge that the members of the petitioner/appellant's association purchased the respective sites for the establishment of small workshops for their livelihood and that some of the sale deeds clearly prove that the members of the petitioner's association are running their small workshops in their respective sites for more than 20 years and that after purchasing their respective sites, the members of the petitioner's association constructed buildings by obtaining plan approval from the then Gajuwaka Municipality and established their small workshops in the part of their respective buildings and are residing in the remaining part of the building with their respective families after taking small scale industries registration and trade licence from the then municipality and have been paying the trade tax to the then municipality and thereafter Greater Visakhapatnam Municipal Corporation till date and that thus, the Greater Visakhapatnam Municipal Corporation recognized the usage of the small workshops of the petitioner's association by imposing heavy licence fee of about Rs.10,000/- to

Rs.40,000/- per annum for just unit of 200 square yards and that thus, the workshops have been recognized as not causing any disturbance to anybody including the neighbouring residents and that the respondents also levied the property tax to the construction of the members of the plaintiff association as a commercial units but not as residential units which itself also shows that the respondents/defendants recognized the activities of the members of the petitioner's association and that the petitioner's association members also obtained electricity power for the commercial activities and they are paying electrical charges under commercial category to the concerned authorities for more than 20 years which proves that all the government departments recognized the commercial activities of the petitioner's association members, but some of rowdy elements with their henchmen with a view to collect the money illegally from the members of the petitioner's association took out the name of extinct and defunct society named Thokada Praja Samrakshana Seva Samithi and started threatening and demanding to pay money, but the members of the petitioner's association did not agree to comply their illegal demands as such the said men of Thokada Praja Samrakshana Seva Samithi addressed a letter dated 17.12.2012 to the District Collector, Visakhapatnam and pollution control board and APIIC who did not take any action as there is no truth in the allegations and therefore, the men of said Thokada Praja Samrakshana Seva Samithi came up with another fictitious and false society self named 'Thokada Praja Parirakshana Committee' and reported to D.1 and D.2 who in turn issued notices under Section 449 of H.M.C. Act but more than 50 villages sent representation to D.1 and D.2 that there are no problems from the workshops of the petitioner's association and that the units have been creating 400 to 500 jobs to the residents.

14. To boot, learned counsel for petitioner adroitly submits in vehemence that the members of the petitioner's association came to know that the said petty politicians again pressurized and influenced the authorities of the

respondents to take steps to close the units of the association or else to make them to meet their illegal demands and that the officials of the respondents are threatening that they will not allow the members of the petitioner's association to run their workshops and they are preparing notices to the members of the petitioner's association to close the units. He also submits that on 02.02.2017 the officials of Town Planning Department came to schedule property and gave an ultimatum that they will take severe steps on the schedule property if the petitioner's association members fail to comply their demands within 3 or 4 days and that hence the members of the petitioner's association filed the suit.

15. To boot, learned counsel for petitioner adroitly submits in vehemence that the documentary evidence of the petitioner's association clearly proves that all the workshop buildings are owned by the members of the appellant and they purchased the site and constructed buildings for the purpose of establishment of workshops and they are running workshops from the date of construction of the buildings and that the respondents 1 and 2 recognized the workshop buildings as commercial buildings and they collected property tax as commercial buildings taxes from the members of the appellants since twenty years and that all the members are having industrial power connections in category 3 which were allotted by the APEPDCL about 15 to 20 years back and that the respondents 1 and 2 issued trade licences to the 16 members of the association long back recognizing the workshops and that the District Industrial Center of Visakhapatnam issued small scale Industries licences and also MSME UDYOG ADHAR licence to more than 40 members of the association and that 57 members of the association are paying commercial tax by way of GST to the Commercial Tax Department of Government of Andhra Pradesh and that the remaining 17 members are below commercial tax category and there is no need to pay commercial tax because they are below 10 lakhs turnover of the costs of the works and that the letters given by the original owners of the Thokada Village to the

respondents and also to the District Collector show that the members of the 3rd respondent are frequently harassing the members of the petitioner's association and there is no inconvenience or any type of pollution to the residence of the Thokada Village and the workshops of the petitioner's association are running since 20 years and the 3rd respondent association was formed recently and purchased sites recently and construction buildings without having plan approvals from the GVMC and they are harassing and also illegally demanding money from the members of the petitioner's association and that the lay out plan filed the petitioner's association clearly shows that there is a road in between the large, big industries and the SFA residential quarters and MIG and LIG residential quarters and that the width of the road is 60 feet and the same road is running in between the petitioner's association workshops and Thokada Village and there is 30 feet road in between the Visakha Wire Ropes Private Limited which is highly polluted big industry and Thokada Village and also there is a 60 feet road in between the Berger Paints and Thokada Village and the above said 2 big industries are authorized by the APIIC, and that said SFA, MIG and LIG quarters were Constructed by the Government of Andhra Pradesh Industrial Infrastructure Corporation.

16. To boot, learned counsel for petitioner adroitly submits in vehemence that in the case of **Aashrith Hotels (Vs.) Assistant Medical Officer of Health, Circle No.5, West Zone, MCH. Hyderabad reported in 2005(3) ALD 505**, Hon'ble High Court of A.P. held that in spite of the Zoning Regulations not stating anything about bars and liquor shops, the fact that several liquor shops and bars are running in residential areas in Hyderabad shows that nocs were issued by the respondent to some other persons earlier for opening liquor shops, even in residential areas also. So, respondent refusing to issue NOC to the petitioner on the assumption that running of a Bar in a residential area is not permissible, without taking into consideration the provisions of the Act and Rules, is improper.

17. To boot, learned counsel for petitioner adroitly submits in vehemence that in this case on hand, the respondents 1 and 2 did not take any steps to remove the industries situated opposite to SFA, MIG, and LIG Residential Quarters, but they colluded with 3rd respondent to close the petitioner workshops even without issuing show cause notices and that in the residential quarters constructed by the Government i.e. Vuda Quarters in Vikas Nagar, Gajuwaka, Vuda quarters in Vinayaka Nagar, Gajuwaka and Vuda Quarters in MVP Colony, Visakhapatnam, Vuda Quarters in Pothinamallayyapalem in Visakhapatnam, Vuda quarters in Kurmannapalem, Gajuwaka Mandal, there are hundreds of work shops, car garages, commercial shops, welding work shops, hotels, lodges, gas godowns and bar and restaurants in the above said areas, but the respondents 1 and 2 did not take steps against the same and that the respondents did not follow the directions of Hon'ble High Court of A.P. given in the four writ petitions filed by four members out of the 74 members of petitioner's association and that said four writ petitioners have submitted their explanation with little delay due to lack of information of the orders and that the four writ petitions were not served any final order. He also submits that some of the members filed writ petition when respondents 1 and 2 tried to disconnect the power connection to their work shops but they withdrew their writ petition since respondents 1 and 2 stopped their action to disconnect the power.

18. To boot, learned counsel for petitioner adroitly submits in vehemence that in the case of **Balatripura Sundari (Vs.) Municipal Corporation of Hyderabad reported in 1996(1) ALD 374**, Hon'ble High Court of A.P. held that there is no prohibition for running business/trade in residential area and Section 521 of HMC Act does contain any such clause and even assuming that the area in which the trade licence is sought is residential area, yet, there should some provision to curtail the trade operations and so the refusal for the grant of licence on the ground that the area is in the residential zone is not sustainable.

19. To boot, learned counsel for petitioner adroitly submits in vehemence that in the case of **J. Rama Krishna Rao (Vs.) Municipal Corporation of Hyderabad, Hyderabad reported in 2004(6) ALD 791**, Hon'ble High Court of A.P. held that once the officials of the corporation have collected the licence fees and also allotted TIN, ordering for closure of the restaurant stating no licence can be granted in favour of the petitioner-firm is arbitrary and illegal and as per the para number 17 of the citation TIN number shown in E-Seva center amount paying and giving a receipt only licence for the year. In view of the same, the submission made by the learned counsel for the respondent corporation that licence was not issued in required format and it cannot be treated as according permission to run the restaurant, cannot be accepted and as per the policy TIN number was allotted and licence fee was collected which will amount to granting of licence and writ petition was allowed in favour of the petitioner. He also submits that in the case of **A.R. Bhoopathi, Proprietor, Venkateswara Iron Works (Vs.) Special Officer, Municipal Corporation, Hyderabad, reported in 1979(2) AndhWR 146**, Hon'ble High Court of A.P. held that the commissioner shall have an option to form an opinion that the trade or operation is dangerous to life, health and property or likely to create a nuisance either from its nature or by reason of the manner in which the conditions under the same is or is proposed to be carried. But, before forming such an opinion, the commissioner is obliged under sub-section (2) to issue a written notice to that effect signed by him and serve it on the person affected or if that is not possible, get it affixed to the premises to which it relates. He also submits that the reasons mentioned in the notices issued by the respondents 1 and 2 to the four writ petitioners attract the provisions of section 521 of the Act but said notices were issued under sections 441, 443 and 461 of GHMC Act and that the notices do not recite the manner of sound pollution or distance between the workshops and the village and that all these things can only be decided after full dressed trial

and that the petitioners expensed lakhs of rupees for workshops and that the employment of nearly five hundred workers is involved in the matter but there are only 11 to 15 persons pertaining to 3rd respondent association and that they purchased the sites very recently but the buildings and workshops are in existence since 20 years and therefore, the order of learned trial judge is to be set aside and temporary injunction is to be granted in favour of petitioners.

20. A contrario sensu, learned counsel of 3rd respondent also submits in vehemence that Initially in the year 2015, the petitioner/appellant association filed a writ petition No. 24785 of 2015 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh against GVMC (R1) and Electrical Department apprehending disconnection of electricity to the work shops but at the stage of admission itself, the Hon'ble High Court closed the Writ Petition on 13-08-2015 and that Ex.R.1 is the copy of judgment dated 13-08-2015 in Writ Petition 24785 of 2015. He also submits that in the year 2016, this respondent submitted complaint to the GVMC (R.1 and R.2) against the petition industrial units since they are being run in the residential area covered by S.Nos. 50/1 and 50/2 of Thokada Village and surrounding residents are facing much inconvenience and health problems and so requested to intervene in the matter to bring down the usage of the premises for residential purpose and to close the ind petitioner's association ustry in the residential area. He also submits that thereupon the Commissioner, GVMC inspected the workshops and issued notices under Ex.R.2 under section 441 R/w Section 461 of HMC Act 1955 under Rc. No. 1017/2016/ACP-V, dated 01-09-2016 to Nos. 1, 15, 16, 50 and 68 amongst the petitioner's association calling upon them to close the industry which was established in residential area within 7 days from the date of receipt of notice, failing which the same will be seized in pursuance of powers conferred under section 461 - A of HMC Act, 1955 immediately after expiry of the stipulated time and expenses will be

recovered as the same was established in violation and contrary to the rules. He also submits that immediately after receiving the said notices by 1, 15, 16, 50 and 68 of petitioner's association individually, they filed a writ petition No.37637/2016 before the Hon'ble Court through the plaintiffs association by challenging the notices, but on 03.11.2016 for the reasons best known to them they had withdrawn the said WP No. 37637/2016. (Ex.R.3 is the copy of Order in W.P. No. 37637/2016).

21. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that after withdrawing the WP No.37637/2016, four individuals filed individual Writ Petitions (W.P. Nos. 39285/2016, 39316/2016, 39318/2016 and 39320/2016) before the Hon'ble High Court against GVMC, State of A.P., APEPDCL, VUDA, APIIC - Industrial Area Local Authority & District Collector challenging the notices dated 01-09-2016 issued by GVMC under Ex.R.2 and that the 3rd respondent got impleaded in the said writ petitions and filed their counters and after full dressed enquiry, the Hon'ble High Court passed common order in all the four Writ Petitions on 20.12.2016 under Ex.R.4 as follows:

"All the writ petitions are disposed of holding that the order dated 01-09-2016 be treated as notice under section 443 of GHMC Act and the petitioners are given one week time for submission of explanation. If such explanation are submitted, the competent authority of GVMC shall consider said explanation and pass appropriate orders within a further period of two weeks. If no explanation is filed, the order dated 02-09-2016 revives and it is open to GVMC shall consider said explanation and pass appropriate orders within a further period of two weeks. If no explanation is filed, the order dated 02-09-2016 revives and it is open to GVMC to take further course of action in the matter. In the event of petitioners filing the explanation within one week from today, no coercive action shall be taken against petitioners till final decision is made as directed above. There shall be no order as to costs".

22. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that the petitioners failed to comply the direction ordered by the

Hon'ble High Court within the time stipulated and the GVMC issued speaking orders vide Rc.no.1017/2016/ACP-V dated 20.01.2017 as per the direction of the Hon'ble High Court calling upon the petitioner herein *"to vacate the premises by shifting the industrial units within 7 days from the date of receipt of speaking order, failing which appropriate action will be initiated in pursuance of powers conferred under section 461 A of HMC Act 1955 without any further notice"*. Ex.R.5 is the copy of speaking order dated 20-01-2017 issued by GVMC. He also submits that the petitioner herein submitted their explanation on 19.01.2017 to the GVMC which was received by the GVMC on 21.01.2017. But the GVMC did not consider the explanation submitted by the petitioner and issued final order dated 06.02.2017 directing the petitioner *"to shift the industrial units from Thokada Village within 24 hours from the date of receipt of this order failing which the objectionable Industrial Units will be seized in pursuance of the powers conferred Under Section 461-A of HMC Act 1955 immediately after the expiry of the stipulated time"*. Ex.R.6 is the copy of final order dated 06.02.2017 issued by GVMC.

23. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that the petitioner suppressed all these facts filed this false suit with unclean hands and obtained ad-interim injunction in interlocutory application and that the members of 3rd respondent are suffering from noise, air and water pollution due to the petition units and that some of the members out of 74 units of the plaintiff Association vacated their industries after filing of the suit and in place of old units which were vacated after filing of the suit, 16 new units were inducted in the old premises and then the 3rd respondent reported to GVMC and officials of GVMC inspected the units physically and found that 16 new units were inducted while the above suit is pending in place of old units. Then immediately the GVMC issued notices under Ex.R.7 under section 443 r/w Sec.461 HMC Act, 1955 vide Rc.No.1017/2016/ACP - V, dated 23.08.2017 to all the 16 new units calling upon to close the industry which was established in residential area within 07

days from the date of receipt of the notice, failing which the same will be seized in pursuance of powers conferred on the undersigned under section 461-A of HMC Act, 1955 immediately after expiry of the stipulated period and expenses will be recovered as per rules in force. He also submits that without vacating the premises some of them with others had given an individual affidavits to GVMC and other Government Authorities on oath that they are intended to vacate the workshop within 90 days and they are ready to pay incidental charges. Ex.R.8 copies of affidavits (9 Nos.) obtained under RTI Act.

24. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that on 01.06.2016, the officials of AP Pollution Control Board, Regional Office, Visakhapatnam inspected the area wherein the industries are situated and conducted AAQ and Noise monitoring tests. In their inspection it is recorded that the noise level is in the range of 88-94 dB(A) at source and in the range of 68-71 dB(A) which are exceeding the residential area standards i.e. 55 dB(A) and SPM value in the ambient air quality monitoring recorded at boundary of the industry on South Side is 118.0 ug/m³ which is exceeding the ambient standard of 100 ug/m³. The AP Pollution Control Board, Regional Office, Visakhapatnam after thorough and careful consideration of all the material facts came to firm opinion that the Industry is operating without CFE/CFO of the Board and causing all pollution problems in surrounding area and issued show cause notice on 25-06-2016 vide show cause notice no. 227/PCB/RO-VSP/2015-1360. But when there is no satisfactory response the Joint Chief Environmental Engineer, AP Pollution Control Board, Zonal Office, Visakhapatnam issued Directions vide Closure Notice No.8021-VSP/PCB/ZO-1002 dated 05.10.2016 under section 31(A) of the Air (prevention and control of pollution) amendment Act 1987 to shift the industries within six months i.e., by 01.04.2017 and shall not carry out any operation at existing location from 01.04.2017 onwards and also shall not cause any air pollution/odour nuisance to the surrounding environment,

failing which legal action will initiated without any prior notice,. In the interest of Public Health and Environment. Ex.R.9 is the directions of Joint Chief Environmental Engineer, Andhra Pradesh Pollution Control Board dated 05.10.2016.

25. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that in spite of the directions issued by the Andhra Pradesh Pollution Control Board, Visakhapatnam when the industry did not comply the direction, the AP Pollution Control Board, Visakhapatnam again issued notice No.227/PCB/RO-VSP/2017-769 dated 27-06-2017 to two of the members in plaint schedule referring the Supreme Court Judgment in WP No.375 of 2012 that "*Hon'ble Apex Court has directed in the WP No.375 of 2012 to issue closure order to the industries who are operating without valid consent for operation (CFO) and without having primary effluent treatment plant for the treatment of the effluents*" to attend the legal hearing. Ex.R.10 is the Notice No.227/PCB/RO-VSP/2017-769 dated 27-06-2017 along with supreme Court Judgment in WP No.375/2012. But there is no response to the Notice dated 27.06.2017, the Joint Chief Environmental Engineer, AP Pollution Control Board, Visakhapatnam issued closure Order notice no. 8021-VSP/PCB/ZO-VSP/2016-638 dated 17.07.2017 under section 31(A) of the Air (Prevention & Control of Pollution) Amendment Act 1987 to close the industry with immediate effect in the interest of protecting public health and protection of environment and further directed that APEPDCL has been ordered to disconnect Power Supply with immediate effect and if they resort to run industry by means of diesel generator or any mechanical device, they will be attracting prosecution under section 37(1) of Air (Prevention and Control of Pollution) Amendment Act 1987. After receiving the closure order dated 17.07.2017, the 29th member of plaint schedule M/s. Taj Tyre Re-Button Works (Tyre Retreading) vacated the industry. But 16th member of plaint schedule M/s.Sri Lakshmi Durga Engineering Enterprises is still running Industry with Diesel Generator as power supply was disconnected by

APEPDCL. Ex.R.11 is the closure notice no. 8021-VSP/PCB/ZO-VSP/2016-637 & 638 dated 17.07.2017. He also submits that Thokada Village wherein the plaint schedule industries are running their activities is earmarked as completely residential zone. Ex.R.12 the extract of sanctioned zone development plan issued by Visakhapatnam Urban Development Authority (VUDA).

26. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that one of the residents of Thokada Village had made an application under RTI Act to GVMC requesting to inform whether any permission has been accorded to any of the Industries unauthorizedly running in Thokada Village is completely a residential zone. On receiving application, GVMC issued an endorsement on 29.12.2014 vide RTI No.259/2014/ACPV/41 stating that no permission has been accorded to anybody to run any Industry in Ward No.59, S.Nos.50/1, 50/2, 50/7, 51/1 and 51/2. Ex.R.13 is the copy of endorsement dated 29.12.2014 issued by GVMC. He also submits that one of the residents of Thokada Village had made an application under RTC Act to APIIC - Industrial Area Local Authority requesting to inform whether any permission has been accorded to any of the industries unauthorizedly running in Thokada Village which is completely a residential Zone. On receiving application, Commissioner, APIIC - industrial Area Local Authority issued a letter on 17-07-2015 vide Lr.No.APIIC-IALA/ATN/RTI Act/01/2015-16 stating that no permission has been accorded to anybody to run any Industry in Ward No.59, survey Nos.50/1, and 50/2 as Thokada Village did not cover under territorial limits of APIIC. Ex.R.14 is the Copy of letter dated 17.07.2015 issued by APIIC- Industrial Area Local Authority.

27. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that in the case of **Smt. E. Raja Mani and Others (Vs.) E. Dayanand and others reported in 2019(1) ALT 344**, Hon'ble High Court

of A.P. held that there should be sufficient averments for a prima facie case and about balance of convenience and also irreparable loss, sufficiency of the statement in the affidavit is however a matter for the court to decide. He also submits that the petitioner failed to plead in the affidavit that they have prima facie and balance of convenience in their favour. He also submits that in the case of **My Home Industries Limited, A company represented by its authorized Officer, B. Muralidhar, Hyderabad (Vs.) Gonnabattula Ramana reported in 2017 (6) ALT 94**, Hon'ble High Court of A.P. held that temporary injunction, In the application for temporary injunction, the initial onus as well as the legal burden is on the plaintiff to establish the legal requirements for grant of temporary injunction.

28. To boot, learned counsel of 3rd respondent also adroitly submits in vehemence that in the case of **Smt. Hussaini Khatoon and others (Vs.) Madreasat-Un-Noor-Li-Thafeezil-Quran, Under Sharfia Educational and Welfare Society, Hyderabad and others reported in 2018(2) ALT 208**, Hon'ble High Court of A.P. held that order 41, Rule 27 of CPC does not permit the taking of additional evidence unless the lower court has wrongfully refused to admit the same or the party producing the additional evidence could not introduce this evidence in the lower court for the reasons enumerated in the clause (aa) of Rule 27 of CPC. So, he requests the court not to read the documents filed by the petitioner before this court along with the memo as additional evidence. He also submits that in the case of **Chapa Lakshmi (Vs.) Sri Pentakota Paradesi Naidu reported in 2014(4) ALT 174**, Hon'ble High Court of A.P. held that A person who approaches court seeking equitable relief of injunction must place all relevant and material facts before court, a person who approaches court with unclean hands is not entitled to such a relief. He also submits that in the case of **Peta Radha Reddy and another (Vs.) C.V. Manoharan and others reported in 2013 (5) ALT 157 (D.B.)**, Hon'ble High Court of A.P. held that one of the cardinal principles in the matter of examining the applications filed under

order 39 Rules 1 and 2, CPC is that a party claiming that relief of temporary injunction must come to court with clean hands. He also submits that in the case of **Ankem Madhava Rao and another (Vs.) Simhadri Rama Rao and another reported in 2016(6) ALT 106**, Hon'ble High Court of A.P. held that Equitable relief of temporary injunction, this court finds that the plaintiffs, who could not establish a prima facie case, which is a sine qua non, are not entitled to the equitable relief of temporary injunction.

29. Whatever might be the above noted contentions and rival contentions of both the parties, it is proved by the documentary evidence of Exs.P.1 to P.49 which are certified copies of register sale deeds, certification of registration, electricity bills and various letters dropped by the petitioner's association to Commissioner, GVMC and other authorities and it is also admitted that members of petitioner's association as described in Ex.P.41 are running petition work shops since long time. But the respondents are contending that the petition association members are running said work shops against the rules and regulations in the residential locality. Apart from the above noted contentions of both parties, at this stage, this court is concerned with prima-facie case, balance of convenience and irreparable loss of both the parties. Prima-facie case cannot be equated with proof but it may mean that there is a good ground for proceeding with the matter on hand in favour of a particular party. Balance of convenience is the convenience remained in favour of a party after deducting the conveniences and inconveniences of both the parties. Irreparable loss is the loss which cannot be remedied in terms of money.

30. If the above noted factual matrix of the case is appreciated, it is crystal clear that the facts that the petition industrial units are in the residential locality and the lis between the parties has checked career are not in dispute. Admittedly, our Hon'ble High Court dealt with this lis in Writ Petition Nos.39285/2016, 39316/2016, 39318/2016 and 39320/2016 filed by some of

the members of the petitioner's association. The common order of our Hon'ble High Court in the said writ petitions has been exhibited as Ex.R.4 by the respondents wherein it was observed by our Hon'ble High Court that *the petitioners in all these writ petitions have established small industrial units in owned premises/leased premises, which are originally intended for residential accommodation. It appears lot of residential houses have come surrounding their units. On account of pollution caused by these industrial units over a period of time there has been protest by the local residents. Having received the complaints from the local residents, the Greater Visakhapatnam Municipal Corporation (1st respondent) issued notice dated 01-09-2016 directing the petitioners to close the industries established in the residential area within seven days. The said notice was issued by referring to Sections 441 and 461 of Greater Hyderabad Municipal Corporation Act, 1955 (for short "the GHMC Act"). As it now emerges that the Municipal Corporation issued notices holding that without due permission residential houses were converted for commercial purposes. Our Hon'ble High Court of A.P. further observed that Petitioners admittedly did not respond to said notice and filed these Writ Petitions after a lapse of more than two months. Petitioners initially placed reliance on the correspondence between APIIC and the District Collector, where under APIIC suggested for provision of alternate site to relocate the units. Apparently, the Government is not in favour of providing alternate site. Our Hon'ble High Court of A.P. also held in paragraph six of said common order in the above noted writ petitions that A bare reading of Sections 441 and 461 of GHMC Act, it is seen that neither of these provisions is applicable to the cases on hand. In the instant cases, the allegation is conversion of residential building for non-residential purpose. The appropriate provision is Section 443 which prohibits use of any building originally intended for human habitation, as a workshop, workplace, and factory. Be that as it may, since the power is traceable to Section 443, merely because wrong provision is mentioned does not vitiate the*

proceedings initiated against petitioners. In paragraph seven (of Ex.R.4), it was further held that however, there is merit in the contention of the learned counsel appearing for petitioners that the orders is not preceded by notice and opportunity. whereas it mandates the petitioners' to relocate their units to some other place, within one week. Even in ordinary course such relocation may require longer time than what was granted. In paragraph eight (of Ex.R.4), our Hon'ble High Court also held that whenever an order of an authority visits with civil and evil consequences, the minimum that is expected from such authority is to cause notice, give opportunity for submission of explanation, considered the explanation and pass appropriate speaking orders there on but straight away cannot pass an order directing removal.

31. As rightly observed by learned trial judge, the above noted common order of our Hon'ble High Court in the above said Writ Petitions has not been brought to the notice of the trial court by the petitioner and petitioner successfully got ad-interim exparte injunction in the suit from the trial court. But learned trial judge held as one of the grounds that the petitioner is not entitled to equitable and discretionary relief of injunction due to suppression of said material fact. Consequently, learned trial judge dismissed the injunction application of the petitioner vacating the exparte ad-interim injunction dated 06.02.2017.

32. The petitioner's association is also admitting about filing of above noted writ petitions before our Hon'ble High Court and passing of common order by our Hon'ble High Court as above noted. It came out from the above that the petition work shops are being run in the residential area and that no notification was issued so far notifying the area where the petition industrial units are being run as non-residential area and thus, the industrial units of members of petition association are still being run in the residential area only. The petitioners cannot be permitted to say that they must be permitted

to run the industrial units in residential area since some other persons are also running industrial units in other residential localities. Ex.R.8 recites that nine members out of petitioner's association gave affidavits to 2nd respondent seeking 90 days time to shift their units. Undoubtedly, Ex.R.9 copy of Direction issued by the Joint Chief Environmental Engineer obtained under RTI Act dated 05.10.2016 supports the complaint of 3rd respondent given to the 2nd respondent. It came out from Ex.R.12 Extract of Sanctioned Zone Development Plan issued by VUDA dated 17-03-2015 and Ex.R.14 Copy of letter dated 17-07-2015 issued by APIIC - Industrial Area Local Authority dated 17-07-2015 that the APIIC did not grant any permission to run the industries in the land covered by S.No.50/1, 50/2.

33. Thus, this court has no other option except to hold that the petitioner's association has no prima facie case, balance of convenience and irreparable loss in view of the above noted reasons. But, it is noteworthy that there is nothing on record that the competent authority of GVMC issued notices under section 443 of GHMC Act to all the members of petitioner's association who are presently running industrial units in the petition area. So, in view of directions of Hon'ble High Court of A.P. in paragraph eight of Ex.R.4 writ petitions, it must be directed that all the members of the petitioner's association may submit their grievances by way of explanations to any competent authority of GVMC within a week and thereupon, the competent authority of GVMC shall consider said explanations and pass appropriate orders as per rules within one week and if no explanation is submitted by any member of the petitioner's association, it shall be deemed that he has no any explanation to offer and after passing such appropriate final orders, the respondents 1 and 2 may take coercive action as per law to close the petition units. So, as the order of learned trial judge is not in tune with the orders of Hon'ble High Court of A.P., in para eight of Ex.R.4, the order of learned trial judge passed in I.A.89/2017 on 03.07.2018 is liable to be set aside. Accordingly, the point is answered with above noted directions.

34. In the result, the Civil Miscellaneous Appeal 1/2018 is 'allowed' and the order of learned Principal Senior Civil Judge, Gajuwaka passed in I.A.89/2017 in O.S.38/2017 dated 03.07.2018 is set aside. In view of directions of Hon'ble High Court of A.P. in paragraph eight of Ex.R.4 writ petitions, it is directed that all the members of the petitioner's association may submit their grievances by way of explanations to any competent authority of GVMC within a week deeming that they already received notices under section 443 of GHMC Act and thereupon, the competent authority of GVMC shall consider said explanations and pass appropriate orders as per rules within one week thereafter and if no explanation is submitted by any member of the petitioner's association, it shall be deemed that he has no any explanation to offer and after passing such appropriate final orders, the respondents 1 and 2 may take coercive action as per law to close the petition units if the final orders of competent authority of GVMC are not in favour of the members of the petitioner's association. Accordingly, the CMA 1/2018 is disposed of. Under the facts and circumstances, there is no order as to costs.

Paras 1 to 10 typed by the typist on computer to my dictation and rest of the paras were dictated to Stenographer Grade-II of this court, transcribed by him, corrected and pronounced by me in the open court this the 8th day of April, 2019.

xx Sd/- Sri R. Sivakumar
**XIII Additional District Judge
Gajuwaka**

APPENDIX OF EVIDENCE :-

Witnesses examined for :-

Appellant/Petitioner/Plaintiff

Respondents/Defendants

No oral or documentary evidence was adduced on either side

Exhibits marked for :-

N I L

xx Sd/- Sri RSK
XIII ADJ/GWK