

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.1597 of 2009

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Date: April 09, 2015

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Between:

Gantiyada Govindaraju. ... Petitioner

And

1. The Tahsildar,

Pedagantiyada Mandal,

Visakhapatnam & 3 others. ... Respondents

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HON'BLE SRI JUSTICE A.V. SESA SAI

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ORDER:

This writ petition is filed seeking the following relief:

“To issue an appropriate writ, direction or order, more particularly one in the nature of a writ of Mandamus declaring the action of the respondents in attempting to demolish the petitioner's house and to forcibly dispossess him from the

residential house D.No.14-36-8/1 constructed in accordance with plans approved by the 3rd respondent, vide B.A.No.11184/2008/ACP-V/G1, Visakhapatnam, dated 02.07.2008, in an extent of 300 square yards covered by Sy.No.64/1 A of Peda Gantyada Village and Mandal, Visakhapatnam District, without issuing any notice, without conducting any enquiry, without passing or communicating any order of such demolition or eviction and without giving an opportunity of being heard, as illegal, arbitrary and against the principles of natural justice and consequently to direct the respondents not to demolish the petitioner's house and not to forcibly dispossess him from the above said house."

2. Heard Sri K. Sarvabhouma Rao, learned counsel for the petitioner, learned Government Pleader for Revenue appearing for respondents 1 and 2, Sri S. Lakshminarayana Reddy, learned counsel for the 3rd respondent and Sri P. Jagadish Chandra Prasad, learned counsel for the 4th respondent apart from perusing the material available before this Court.

3. According to the petitioner, he is the absolute owner and possessor of the land in an extent of 300 square yards in Survey No.64/1a of Pedagantyada Village and Mandal, Visakhapatnam District, having purchased the same under registered sale deed dated 14.05.2008 from Sri Kollu Satyanarayana and Smt. Kollu Narayanamma and ever since the date of purchase, he has been in possession and enjoyment of the said property. It is further pleaded that the 3rd respondent accorded permission to the petitioner to construct a residential building consisting of ground floor + first floor in the subject land, vide permission

No.B.A.No.11184/2008/ACP.V/G, dated 02.07.2008. It is the further case of the petitioner that he started construction of the house pursuant to the said permission and except the partition work, rest of the work is completed. It is further alleged that on 30.01.2009 some of the officials of the respondent came to his house and asked the petitioner to remove the structures on the ground that the land belongs to the Government. In the above background, the present writ petition came to be instituted in the year 2009 contending principally that without giving notice and opportunity of being heard, the respondent authorities are attempting to remove the structures.

4. This Court, on 03.02.2009, granted order of *status quo*. Responding to the *Rule Nisi* issued by this Court, a counter-affidavit is filed on behalf of the 3rd respondent Corporation contending *inter alia* that the respondent Corporation approved the building plans submitted by the petitioner for construction of a residential building, vide proceedings dated 02.07.2008, subject to observance of certain conditions as laid down in the proceedings. It is further stated in the counter that the petitioner herein deviated the sanctioned plan granted by the Municipal Corporation in respect of setbacks and coverage. It is also stated in the counter that the Corporation initiated action by issuing notice, vide U.C.No.34/08/ACP-V, dated 31.12.2008. Counter further denies the allegation that the respondent officials tried to demolish the structures on 30.01.2009.

5. It is submitted by the learned counsel for the petitioner on instructions that the petitioner herein did not receive the said notice as stated supra.

6. In the above circumstances, without expressing any opinion on the merits and demerits of the case, this Court is of the considered opinion that the present writ petition can be disposed of by giving opportunity to the petitioner to file explanation to the above referred show cause notice said to have been issued by the Corporation.

7. For the aforesaid reasons, the writ petition is disposed of directing the 3rd respondent to serve a copy of the notice U.C.No.34/08/ACP-V, dated 31.12.2008, to the petitioner herein and on receipt of the said notice, the petitioner herein shall submit his explanation within one month thereafter from the date of service of notice and thereafter it is open for the respondents to pass appropriate orders and to take appropriate action in accordance with law. Till the said exercise attains finality, *status quo* granted by this Court on 02.02.2009 shall continue to operate.

8 . Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: April 09, 2015.

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