

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 27306 of 2008

ORDER :

It is the case of the petitioners that they have purchased each piece of land admeasuring 60 sq.yds forming part of Plot No.104 in Sy.No.753, situated at Koremulla Village, Chowdariguda Hamlet of Koremulla Village, Grampanchayat Chowdariguda, Ghatkesar Mandal, R.R.District from one B.Ramulu through registered sale deeds bearing Nos.2106/2006, 2105/2006 and 2108 of 2006, dated 13.02.2006 and all the plots are situated at adjacent to each other. The vendor of the petitioners B.Ramulu purchased the same through registered sale deed bearing No.98 of 2000, dated 12.01.2000. All the petitioners have applied for construction of residential houses over the said plots of land by paying required permit and better charges to the concerned authority. Thereafter, the Sarpanch, Gram Panchayat Chowdariguda, Ghatkesar Mandal, R.R.District, the concerned authority, granted permission for construction of residential house to each of the writ petitioners under order date 25.03.2007 to the writ petitioners 3 and 2 and under order dated 02.04.2007 to the first writ petitioner. In pursuant to the same, the petitioners have constructed separate residential houses in their respective portions and got the electricity supply to their respective houses and stated leaving therein.

2. While so, the first respondent served impugned notice No.GPC/SPL/2008, dated 10.12.2008 in the names of husbands of the writ petitioners for the removal of their houses within seven days on the ground that the petitioners have constructed the houses in the place left for public purpose of Sy.Nos.751 and 752 of Chowdariguda Gram Panchayat, Ghatkesar Mandal, R.R.District. Aggrieved by the same, the present writ petition is filed.

3. Counter affidavit is filed by the first respondent denying the

averments in the affidavit filed in support of the writ petition about the purchase of land by petitioners. The alleged permission which was granted by the then Sarpanch of the Gram Panchayat dated 25.03.2007 is not a valid permission under G.O.Ms.No.67, dated 26.02.2002. The alleged permission granted by the Gram Panchayat is false. After receiving complaint dated 13.11.2008, this respondent has visited the premises and brought to the notice of the Special Officer, i.e., 3rd respondent about the illegal construction of the petitioners, who instructed this respondent to file a detailed report. In pursuant to the said direction of the 3rd respondent, this respondent conducted enquiry and found that the constructions are being made by the petitioners in the place earmarked for the public park meant for public utility i.e., in Sy.Nos.751 & 752. The said matter was reported to the 3rd respondent on 01.12.2008, who instructed this respondent on 02.12.2008 to evict the petitioners by issuing a notice and also to take action in accordance with law. Hence, impugned notices were issued and sought for dismissal of the writ petition.

4. Heard Sri P.Narsing Rao, learned counsel for the petitioners and Sri G.Narender Reddy, learned Standing Counsel for the first and second respondents.

5. This Court, by order dated 16.12.2008 granted interim stay of demolition and the said order was made absolute on 02.07.2009. Admittedly, the construction made by the petitioners is not in dispute. However, the impugned order goes to show that no prior notices were issued to the petitioners. Even according to the counter affidavit, the 3rd respondent ordered for enquiry and basing on the said enquiry report submitted by the 1st respondent, the 3rd respondent directed to take action against the petitioners after issuing notices to the encroachers. But in the impugned notices, it appears to be silent and the same are in the form of final orders directing the petitioners to

vacate the subject premises. The petitioners claim to have purchased plots in Sy.No.753 and made constructions therein. It is the case of the respondents that though the petitioners purchased land in Sy.No.753, but made constructions over the land in Sy.Nos.751 and 752. Therefore, the dispute whether the constructions alleged to have been made by the petitioners falls in Sy.Nos.751 and 752 or 753, cannot be decided in this writ petition by exercising the jurisdiction under Article 226 of the Constitution of India. It is quite appropriate that any order affecting the rights of the parties should be after issuing notice and even the provisions of the Panchayat Raj Act also provides for issuance of notice before passing final orders that too before issuing final eviction proceedings. This Court is not dealing with the merits of the case, but only on the ground of violation of principles of natural justice, it is appropriate to direct the respondents to give an opportunity to the petitioners to raise all their grievances before the respondent authority, before passing final orders.

Since, admittedly, petitioners were not issued any prior notices before issuing impugned notices, the impugned notices may be treated as show-cause notices and petitioners are permitted to file their explanations within four (4) weeks from today. On filing such explanations, the respondent authority may consider the same and pass appropriate orders in accordance with law, without being influenced by any of the observations made in the order. Till then, *status quo* obtaining as on today shall be maintained. If the petitioners fail to file explanations within the aforesaid period, it is open for the respondents to take appropriate action in accordance with law.

Accordingly, this writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

02.09.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. No.27306 OF 2008

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Date: 02-09-2015

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