

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.3337 of 2011

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Between:

1. C. Dasthagiri Saheb and others

PETITIONERS

AND

1. State of Andhra Pradesh, rep. by its Collector, Chittoor District,
Chittoor, and others.

RESPONDENTS

ORDER:

The petitioners claim to be the legal heirs of one Late Pedda Vannur Saheb S/o. Chowdari Hussain Saheb. The said late Chowdari Hussain Saheb was said to be a Saint. He had constructed a Muttam over an extent of Ac.0.05 cents in Sy.No.479 of B. Kothakota revenue village, 78 years back. The petitioners herein claim to be the decedents of the said late Chowdari Hussain Saheb. After the death of the said Chowdari Hussain Saheb, the grandfather of the petitioners, thereafter the father of the petitioners and then the petitioners are managing the Muttam. Around the Mattam several shop rooms are there. As the Muttam was in the road junction and the traffic flow was getting obstructed, earlier when there was an attempt to remove the shop rooms and clear the road, the petitioners approached this Court by filing W.P.No.27052 of 1997 and this Court by order dated 16.02.1998 disposed of the said writ petition holding that any action that may be taken by the respondents against the petitioners to evict them, shall be in conformity with the procedure prescribed under law and the principles of natural justice shall be followed. Thereafter, as no action appeared to have been taken, once again in February 2011 the petitioners approached this Court by filing the present writ petition alleging that attempts are being made by the respondent-authorities to demolish the shop rooms and tombs existing in Sy.No.479 without following due process of law.

A detailed counter affidavit has been filed by the 4th respondent-Tahsilda, B. Kothakota Mandal, Chittoor District, denying the allegations made in the writ affidavit, stating that an extent of Ac.3.95 in S.No.479 of B. Kothakota Village, was classified as high road as per the diglot of the village, in which, one Chowdari Hussain

Saheb had encroached an extent of Ac.0.02 cents land and constructed a Mattam for the benefit of Fakirs, Sadhus and such other monks. At that time all roads were vested with District Board and the District Board raised objections over the developments made by the monk. As a conciliatory deal, the said monk executed a registered gift deed dated 28.05.1938 in respect of the above property as well as vacant site appurtenant to the Mattam in the name of District Board President, Chittoor retaining the right of maintenance in the legal heirs. Over a period of time a number of unauthorized tea stalls etc., were established causing great deal of hardship and embarrassment to the commuters and the said junction is known as Jyothi Chowk connecting roads leading to Rangasamudram, Molakalacheruvu and P.T.M and gradually it turned to be a hub of activity all around. As the area has become dirty and clumsy the then Sub-Collector, Madanapalle visited the disputed site and issued instructions to initiate action under the A.P. Land Encroachment Act 1905 since the property is a Government property and objectionable poramboke. Accordingly eviction notices were issued on 12.07.1977 to the legal heirs of the monk. Against the said notices the petitioners herein and other legal heirs filed O.S.No.847 of 1977 before the District Munsif, Madanapalle, for grant of permanent injunction. On dismissal of the said suit, they filed A.S.No.101 of 1988 on the file of Additional District Judge, Madanapalle, which was allowed setting aside the decree and judgment in the suit. Thereafter, the petitioners herein again filed O.S.No.42 of 1998 before the Senior Civil Judge, Madanapalle claiming damages for a sum of Rs.2,00,000/- from the respondents and to restore Mattam and the same was dismissed on 4.12.2006. As against the said judgment, the petitioners filed A.S.No.35 of 2007 in the Court of II Additional District Judge, Madanapalle and the same is still pending. The counter further states that in and around the tombs a number of shops selling tea milk and other articles have come up and they are all encroachments on the road margin. To ascertain the extent

of encroachment and to take necessary steps for evicting the encroachers, survey was being conducted. On the survey being conducted, the petitioners rushed to this Court and filed the present writ petition. As on today the tombs claimed by the petitioners are not touched and they are not demolished by the authorities. Since these tombs are causing obstruction to free flow of traffic and several accidents have occurred, and recently two school going children were also died because of the accidents in the said area, efforts are being made to remove the obstructions. However, the same would be done only by following due process of law.

In the light of the detailed counter filed by the respondent-Tahsildar and in the light of the categorical assertion made in the counter affidavit, the writ petition is disposed of directing the respondents not to dispossess the petitioners without following due process of law. However, it is needless to mention that the respondent authorities are duty bound to clear obstructions on the road margin as the same would be in larger public interest vis-à-vis the rights of the petitioners qua their ancestral tombs, in the interest of public safety, the petitioners also shall cooperate with the authorities to prevail peace between the public and of the deceased saints. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

CHALLA KODANDA RAM, J.

19th March, 2015
Js.