

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.9873 of 2007

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“To issue a writ of Mandamus, or any other appropriate writ, order or direction declaring the proposed action of the respondents in trying to dispossess the petitioner from his lawful possession of Shop No.2-215 in Ward No.5, Assessment No. 411 in Survey No.201/1B situated on the side of N.H.No.5, Kathipudi village, East Godavari District as illegal, arbitrary, contrary to the provisions of law or under the Land Acquisition Act and Rules thereon and for a consequential order directing the respondents to not to dispossess the petitioner from his shop and pass such other order or orders.”

2. Heard Sri Ch.Dhanamjaya, learned counsel for the petitioner and the learned Government Pleaders for Roads & Buildings and Home for respondents 1 and 2 and Sri Ravi Cheemalapati, learned counsel for the respondents 3 and 4 apart from perusing the material available before the Court.

3. According to the petitioner, he is the owner and possessor of the Vegetable Shop bearing Dr.No.2-215 situated on the Southern side of NH.5 Road at Kathipudi village, East Godavari District and has been carrying on the vegetable business for the last two decades. It is also pleaded that the petitioner raised a thached hut in the said land admeasuring Ac.0.2 cts situated in Sy.No.201/1B. It is also the case of the petitioner herein that in the year 2002, the first respondent herein acquired an extent of Ac.0.1 cent of land out of the total extent of Ac.0.2 cents and paid an amount of Rs.31,600/- towards compensation. It is also stated that the Panchayat authorities have also given Assessment No.411, recognizing his right, title and interest over the property and the subject shop has electricity connection bearing Sc.No.789. It is also alleged in the affidavit filed in support of the writ petition that the third respondent Sarpanch of the Grampanchayat with a grievance that the petitioner herein did not vote for him in the panchayat elections connived with the respondents 1 and 2 and is trying to dispossess the petitioner from the schedule property. It is also alleged in the

writ affidavit that the first respondent and his subordinates along with the third respondent came to the petitioner's shop on 24.04.2007 and started causing disturbance to his business. It is also pleaded that the petitioner gave a report to the police i.e., second respondent on 24.04.2007 requesting action against the third respondent and there is no response. It is the case of the petitioner herein that if the land of the petitioner is required for any public purpose, it is obligatory on the part of the respondents to acquire the same under the provisions of the Land Acquisition Act and it is not open for the respondents herein to dispossess the petitioner without giving any notice and without giving any opportunity of being heard. In the above background, the present writ petition came to be filed.

4. This Court, while ordering notice on 01.05.2007, granted order of *status quo* and further directed that the respondents shall not interfere except by issuing notice indicating the reasons.

5. Responding to the *Rule Nisi* issued by this Court, counter affidavits have been filed by the respondents 2 and 3 herein, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

6. Right to property is a constitutional right as enshrined under Article 300-A of the Constitution of India, which in clear and unequivocal terms mandates that no citizen of this Country shall be deprived of or divested of his or her property except in accordance with the procedure established by law.

7. Obviously, the grievance of the petitioner against the respondents herein is that they are attempting to dispossess him without recourse to law and there is no counter affidavit filed by the first respondent herein denying the averments in the affidavit filed in support of the writ petition. Even as per the counter filed by the third respondent, the petitioner herein is in possession of the property. Therefore, in the absence of any denial by the first respondent herein, this Court is of the considered opinion that the respondents herein cannot dispossess the petitioner herein without following the due process of law. However, it is always open for the respondents herein to issue notice and afford opportunity of being heard to the petitioner herein before proceeding with the action of dispossession of the petitioner.

8. For the aforesaid reasons, writ petition is disposed of, directing the respondents herein not to dispossess the petitioner from Shop No.2-215 in Ward No.5,

Assessment No.411 in Sy.No.201/1B situated on the side of N.H.No.5, Kathipudi village, East Godavri District without issuing notice and without giving any opportunity of being heard to the petitioner herein. Pending Miscellaneous Petitions, if any, shall stand disposed of. No order as to costs.

A.V.SESHA SAI, J

Date:16.04.2015

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HON'BLE SRI JUSTICE A.V.SESHA SAI

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Between:

Oruganti Satyanarayana s/o O.Venkat Rao,
Hindu, aged 35 years, Occ: Petty Vegetable Vendor,
R/o. Kathipudi village, Sankavaram Mandal,
East Godavari District.

... Petitioner

and

The Deputy Executive Engineer, R&B,
Kathipudi village, Sankavaram Mandal,
East Godavari District and three others.

... Respondents

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