

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.18344 of 2015

DATE: 05.10.2015

Between :

Ramakurthi Veerabhadra Rao @ Raja
s/o Lovaraju R/o D No. 4-16, Vommangi village,
Prathipadu mandal, E G district and others

.... Petitioners

And

The State of A.P.
Rep by its Prl Secretary, PR & RD
Secretariat Hyderabad and others

.... Respondents

Court made the following order:-

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ORDER:

Petitioners are residents of Vommangi village, Prathipadu mandal, East Godavari district. According to petitioners, they have constructed houses/sheds bearing respective door numbers mentioned in the affidavit filed along with writ petition long back and have been living /carrying on their business for several years. They have been paying property tax and obtained electrical connections. While so, on 2.6.2015 a notice was served on them by Panchayat Secretary of the Gram Panchayat alleging that they are in illegal occupation of the road and made illegal constructions on the Zilla Parishad and R & B road and carrying on business. Because of such

illegal constructions, public road and drainage system is affected and water is flowing on the public road causing health hazard to the villagers and people are put to lot of inconvenience. The justification for said notice is orders of this court in PIL No. 70 of 2015 filed by the Sarpanch and some villagers. Petitioners were directed to remove illegal constructions within 7 days of the receipt of notice. Along with the said notice copy of the order passed by this Court in PIL No. 70 of 2015 was enclosed.

2. According to petitioners, on 9.6.2015 they have given reply to the notice through counsel explaining their version to the Gram Panchayat. Alleging that without considering their explanation and without passing orders, on 20.6.2015 the Secretary of the 5th respondent Gram Panchayat visited the place threatening to demolish the structures, this writ petition is filed.

3. This Court by order dated 23.6.2015 granted interim direction not to demolish the houses/shops of the petitioners. Praying to vacate the said interim order, respondent Gram Panchayat filed vacate petition in W.V.M.P. No.3134 of 2015. When the vacate petition is taken up for consideration, with the consent of counsel appearing on either side, writ petition is taken up for final disposal.

4. Heard learned counsel for petitioners, learned Government Pleader for Panchayat Raj (AP) for respondents 1 and 2, learned Government Pleader for Roads and Buildings (AP) for respondent no.3 and Sri Ravi Cheemalapati, learned standing counsel for respondents 4 and 5.

5. Learned counsel for petitioners submitted that notice does not contain details of alleged encroachments of the Zilla Parishad and R and B road; extent of alleged encroachment; description of the properties which are alleged to have been constructed by encroaching on to the public road, are not furnished. Unless notice contains the details, the person on whom notice is served cannot give satisfactory explanation and there cannot be a proper decision by the statutory authority. Impugned notice is liable to be set aside on that ground alone.

6. Learned counsel for petitioners further contended that one of the petitioners was arrayed as respondent in PIL No. 70 of 2015 but no notice was served on him. Other petitioners are not parties to the said PIL. The PIL was disposed of without giving

opportunity to the petitioners herein. Whereas the action is initiated purportedly in pursuant to the order passed by this Court in PIL and when the authority is acting on the directions issued by this Court and when petitioners were not parties to the said litigation, respondent authority ought to have given details of the claim made therein and the reasons for initiating action. Except making vague allegations that petitioners are occupying public road, the notice lacks details for initiation of such action. In support of his contentions, learned counsel placed reliance on the decision of the Supreme Court in **COMMISSIONER OF POLICE, BOMBAY Vs GORDHANDAS BHANJI** and **GARAPATI RADHA AND OTHERS Vs. COMMISSIONER, VIJAYAWADA MUNICIPAL CORPORATION, VIJAYAWADA AND OTHERS.**

7. Learned counsel for petitioners further submitted that petitioners have obtained due permissions before constructing shops/houses and carrying on their business for several years and have been paying property tax to the Gram Panchayat. It is not as if a new shop is constructed recently without the knowledge of the Gram Panchayat, to allege that petitioners are in illegal and unauthorized occupation. That the notice was not preceded by survey conducted in their presence to identify the public road and the alleged encroachment by petitioners. Petitioners did not occupy the Zilla Parishad or Roads and Buildings Department road as alleged in the notice.

8. It is further contended that if the road occupied by the petitioners belongs to R & B and Zilla Parishad, the Panchayat Secretary has no jurisdiction or competency and therefore notice is liable to be set aside on that ground alone.

9. It is further contended that several shops of petitioners are in alignment with existing temple and mosque and if it is the case of the respondent authorities that petitioners are in illegal and unauthorized occupation of public road, action ought to have been taken against the temple and mosque also. Not taking action against them and taking action against petitioners' amounts to arbitrary exercise of power and authority.

10. Sri Ravi Cheemalapati, learned standing counsel for respondent Gram Panchayat submitted that petitioners have deliberately made wrong submission about door numbers and only when the Panchayat Secretary has pointed out in the counter that door numbers mentioned in the writ petition are not affected by the impugned notice, petitioners have come out with a petition for amendment of the

prayer and pleadings and such action of the petitioners is not bonafide. Petitioners are in encroachment of the public road. Alleging that Gram Panchayat and other authorities of the Government are not taking action against such illegal encroachments which is causing lot of inconvenience and hardship to the villagers and creating health hazards due to over flowing of the drainage system, Sarpanch and others filed PIL No 70 of 2015. As per the orders of Division Bench of this Court action is initiated. This court held that unauthorized and illegal constructions are made on the drains and on portion of the road, that a statue was erected in middle of the road, that public roads and drains are meant for public and no individual person can block it or encroach at the cost of public right and that free flow of drainage water is one of the measure for proper sanitation in the local area. This court issued directions to the District Collector and Zilla Parishad, East Godavari to take action jointly for removal of illegal encroachments made by blocking the drain and portion of the road.

11. Learned standing counsel further contended that having noticed the illegal constructions, no property tax is collected from the petitioners. Admittedly petitioners are in encroachment of the public road. Before initiating action, survey was conducted and in the survey it was found that petitioners are in encroachment of the public road.

12. Learned standing counsel further contended that in terms of the provision contained in A.P. Panchayat Raj Act, all the public roads in the village vest in Gram Panchayat and therefore Panchayat Secretary is competent to issue notice and take appropriate action as warranted by law for illegal encroachment of public road. Learned standing counsel therefore submitted that there is no illegality in initiating action against the petitioners.

13. The District Panchayat Officer filed counter affidavit. Learned Assistant Government Pleader adopted the submissions made by learned standing counsel.

14. Two issues arise for consideration in this Writ Petition:

(1) Whether Panchayat Secretary is competent to initiate action against petitioners when the allegation is encroachment on public road belonging to R & B Department and Zilla Parishad; and

(2) If notice issued is bereft of essential details, whether action initiated be nullified

on that ground.

15. As per Section 53 of the Panchayat Raj Act all public roads in a village, except National Highways and State Highways shall vest in the Gram Panchayat. This section also vests power in Gram Panchayat to take steps to remove encroachments and prevent unauthorized occupation on any road other than National High way passing through the Gram Panchayat. In view of the provision contained in Section 53 of the Panchayat Raj Act, there is no merit in the contention urged by learned counsel for petitioners on the competence of the Panchayat Secretary to issue impugned notice.

16. It is a stereo typed notice issued to all the petitioners by putting their respective names at the bottom of the notice. The notice does not give the details of the properties, door/house numbers, more so when door/house numbers are already allotted, the extent of occupation and place where such occupation has taken place. The notice only refers to order passed by this Court in PIL No. 70 of 2015. In the counter affidavit, the Panchayat Secretary further deposed that survey was conducted. There is no averment in the counter that petitioners were present when survey was conducted. Even in the counter affidavit, no details are furnished as to the extent of alleged encroachment; it is vaguely averred that as the extent of occupation is total, there is no need to mention the extent of occupation. The notice also proceeds on the assumption that the petitioners are in unauthorized occupation. It amounts to pre-judging the issue and notice becomes empty formality.

17. Admittedly the action proposed by the Gram Panchayat is to remove the alleged unauthorized occupation by the petitioners and structures made on public road. To give an effective response to the allegation of unauthorized occupations, it is but mandatory to give details of such occupation including the area of occupation, place where it is occupied and nature of illegal constructions made. Though this Court directed to remove all encroachments, before complying with the directions of this court, it is necessary to ascertain the nature of encroachments and therefore show cause notice cannot be an empty formality and it ought to contain all the details.

18. Whenever a statutory authority exercises powers, he must delineate reasons for invoking appropriate provision of law to initiate penal action against any person. Without essential details, the Panchayat Secretary cannot expect proper response

from the alleged encroacher. More so, as stated in the counter affidavit survey seems to have been conducted behind the back of petitioners. No such report was made available to the petitioners. It appears, as an eye wash, a notice is issued in response to directions issued by this Court but no serious effort was made to look into the issue as directed by this Court. This Court reacted to the allegations made by the petitioners in PIL No 70 of 2015 on illegal occupation of the public road and blocking of drainage system that resulted in clogging of water which affects the health of villagers. Thus, consequent to the directions issued by this Court, appropriate action ought to have been initiated by observing the due procedure as required by law, more so, when petitioners did not have opportunity of hearing before this Court.

19. Removal of structures made by petitioners shall have grave adverse consequences on petitioners. Such a course has to be taken after observing elementary principles of opportunity of hearing. There is clear error committed by the Panchayat Secretary in not furnishing the details of the alleged encroachments, not furnishing property particulars and not furnishing copy of survey conducted. Thus, Panchayat Secretary failed to exercise his power properly and his action amounts to abdication of responsibilities entrusted to him under Panchayat Raj Act and Rules made there under.

20. In **COMMISSIONER OF POLICE, BOMBAY**, Supreme Court has laid down the parameters of exercise of statutory power by statutory authority. Supreme Court held as under:

“We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do, Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

21. Same principle is reiterated by this Court in **GARAPATI RADHA**. This is the consistent view of the Constitutional courts. In the instant case, though what is challenged in the Writ Petition is the notice, the principle of law laid down in the

above decisions applies to the facts of this case. The show cause notice cannot be an empty formality and to take effective action, it must contain essential details on which action is proposed and on which explanation is sought.

The two issues are answered accordingly.

22. Taking due note of the directions issued by this Court in PIL No. 70 of 2015, the serious apprehensions expressed by the Sarpanch and other villagers in PIL No. 70 of 2015 and having regard to the serious infirmities noticed in the proceedings initiated against the petitioners, writ petition is disposed of with following directions:

1. The Panchayat Secretary of 5th respondent Gram Panchayat is directed to furnish the report of the survey conducted and also furnish details of the extent of alleged unauthorized occupation by each of the petitioners, within a period of one week from the date of receipt of copy of this order.
2. On receipt of all documents and details of the properties alleged to have been encroached by the petitioners, they shall file reply within one week thereafter. Panchayat Secretary shall afford personal hearing to petitioners. The date of personal hearing shall be fixed within one week from the date of receipt of explanations furnished by the petitioners and date and time of personal hearing shall be communicated to all the petitioners with due acknowledgment. He shall hold personal hearing within two weeks. The Panchayat Secretary shall consider the explanations of petitioners and documents, if any submitted by petitioners and shall pass reasoned orders within a further period of one week.
3. Till final orders are passed, 5th respondent Gram Panchayat shall not take any coercive action against the petitioners.
4. Parties are directed to adhere to the time scheduled fixed in the above

paragraphs. It is open to the respondent authorities to take appropriate action as warranted by law, if the petitioners do not cooperate and seek to drag on the matter.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

No costs.

_____**P.NAVEEN RAO,J**

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