

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION Nos.33940, 35801 and 36363 of 2014

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COMMON ORDER:

Since the cause in the present writ petitions is one and the same, this Court deems it appropriate to dispose of these writ petitions by way of this common order.

2. In this batch of writ petitions the petitioners are assailing the action of the Assistant Engineer, Roads and Buildings, Badvel, YSR Kadapa District in attempting to demolish the shops of the petitioners in pursuance of the general notice dated 13.10.2014.

3. Heard Sri L.J. Veera Reddy and Sri V.R.Reddy Kovvuri, learned counsel for the petitioners and the learned Government Pleader and perused the material available on record.

4. According to the petitioners, they are the residents of Badvel town and are doing petty businesses such as goldsmith, barber, chicken shop, fancy store, clothes store, tiffin center, flour mill, provision stores etc., since several decades and some of them inherited the business from their ancestors and the previous owners who sold the shops to them. It is also pleaded in the writ affidavits that nearly forty years back shops were constructed by the respective owners on R and B Poramboke land on Badvel-Siddoutam Road, touching the R.T.C compound wall on the eastern side. It is also stated in the affidavits that the Badvel-Siddoutam Road is with a width of 34 feet on each side with divider on the middle of the road and it is spacious road and there is no traffic congestion. It is also the case of the petitioners that they all belong to poor families and they are doing the petty business in the shops constructed on the R and B Poramboke land and the business is the only source of their livelihood. It is the further case of the petitioners herein that while the things being so, the Assistant Engineer, Roads and Buildings, Badvel, YSR Kadapa District issued general notice dated 13.10.2014, asking the petitioners for removal of the encroachments alleged to have been made by the petitioners herein on R and B Poramboke land on Badvel-Siddoutam Road.

5. In all these writ petitions it is the contention of the petitioners herein that the Assistant Engineer, Roads and Buildings, Badvel, YSR Kadapa District has no jurisdiction to issue the impugned notice and the only course of action open for the respondents is to invoke the provisions of Andhra Pradesh Land Encroachment Act, 1905.

6. A counter affidavit is filed by the Assistant Engineer, Roads and Buildings, Badvel, YSR Kadapa District, denying the averments in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action. In the said counter affidavit, it is stated by the Assistant Engineer that he issued the impugned notice dated 13.10.2014 in the public interest to all the encroachers who encroached the road margin belonging to the R & B Department for removal of encroachments in the public interest. It is also stated in the said counter affidavit that the third respondent/TaTahsildar, Gopavaram Mandal, YSR Kadapa District issued individual notices on 26.12.2015 to all the encroachers under the provisions of the Andhra Pradesh Land Encroachment Act, 1905 and further action is pending in view of the interim orders passed by this Court.

7. The entire counter affidavit is absolutely silent as to under which provision of law the Assistant Engineer issued the impugned notice dated 13.10.2014 and no provision of law could be pointed out by the learned Assistant Government Pleader under which the impugned general notice came to be issued by the Assistant Engineer, Roads and Buildings Department, Badvel.

8. In view of the above facts and circumstances of the case, the writ petitions are allowed, declaring the general notice dated 13.10.2014 issued by the Assistant Engineer, Roads and Buildings, Badvel, YSR Kadapa District as illegal, without jurisdiction and unsustainable. However, it is open for the authorities to proceed in accordance with law pursuant to individual notices dated 26.12.2014 said to have been issued by the third respondent/Tahsildar, Gopavaram Mandal, YSR Kadapa District and take appropriate action. It is also made clear that if no such notices are served, fresh notices shall be served on the petitioners herein and to proceed in accordance with law, after giving opportunity to the petitioners. As a sequel, Miscellaneous Petitions if any, shall stand disposed of. No order as to costs.

A.V.SESHA SAI,J

Date: 08.06.2015

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Dated 08th June, 2015

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