

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION NO.28775 OF 2015

ORDER:

This writ petition is filed seeking the following prayer:

“...to grant an order or direction or writ, more so in the nature of writ of mandamus declaring the action of respondents 2 to 4 in not considering the representation dated 18.06.2015 to take action against the illegal constructions made by respondent Nos.5 to 9 in Plot No.38/Part, 66, 77 and 79/part, in Sy.No.4, 5/1, 87/P(new) Sy.No.52(old) in ward No.64 situated at New Gajuwaka Road, Visakhapatnam, without any title or permission from the 2nd respondent as illegal, arbitrary, highhanded, violative of orders of this Hon'ble Court in W.P.MP.No.35006 of 2009 in W.P.No.26877 of 2009 dated 31.12.2009 apart from being violative of provisions of A.P.Municipal Corporation Act, 1994, and violative of Article 14 of Constitution of India, and consequently direct the respondent No.2 to 4 to consider the representation dated 18.06.2015 dispose of the in accordance with law.”

2. The petitioners alleged that illegal construction has taken place in the properties belonging to the petitioners and no action is taken up by the respondent-Authorities in considering the representation of the petitioners dated 18.06.2015.

3. When the matter was considered for admission, the learned Standing Counsel for the 2nd respondent/Greater Visakhapatnam Municipal Corporation informed the Court that O.S.No.89 of 2015 on the file of Junior Civil Judge, Gajuwaka, Visakhapatnam, was filed by one of the family members i.e., the son of the 2nd petitioner with regard to the same property levelling the same allegations of illegal encroachment and construction.

4. There is no averment in the writ petition regarding institution

of suit. Only when the learned Standing Counsel for the 2nd respondent informed the Court that suit is filed on the same subject property, time was sought to ascertain and to file an affidavit.

5. In the additional affidavit, the petitioners admitted about the institution of suit concerning the same properties. Even though an additional affidavit is filed, stating that suit is filed but wrong number is mentioned. The petitioners have given the suit number as O.S.No.43 of 2015 whereas the number assigned to the suit instituted by son of the 2nd petitioner is O.S.No.89 of 2015.

6. It is also averred in the additional affidavit filed by the petitioners that a representation was made to the 2nd respondent to take action against the illegal occupation, encroachment and construction, but no action is taken on the said representation and that the plaintiff, who instituted the said suit is a family member and one of the owners of the property.

7. It is not in dispute that the properties claimed by the petitioners are the joint family properties and the plaintiff in the said suit is son of the 2nd petitioner and all of them had common interest in the subject property. It appears that as injunction was not granted by the trial Court, other family member claiming as owner of the property filed this writ petition. Since on the same issue O.S.No.89 of 2015 is already filed by the son of the 2nd petitioner and the said suit is pending consideration by Junior Civil Judge, Gajuwaka, this Court is not inclined to entertain the writ petition. The action of the petitioners amounts to abuse of process of the Court.

8. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

P.NAVEEN RAO, J

Date: 29.10.2015
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