THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.28001 of 2011

18.06.2015

Between:

Totapalli Jayachandra Reddy

…**Petitioner**

And

The District Collector,
SPSR Nellore District and others

…**Respondents**

Counsel for the petitioner: Mr.V.Roopesh Kumar Reddy

Counsel for respondent Nos.1 and 4: Government Pleader for Revenue (AP)

Counsel for respondent Nos.2 and 3: None appeared

Counsel for respondent No.5: Mr.S.Siva Bhami Reddy for Mr.T.V.S.Prabhakar Rao

The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to declare the action of the official respondents in not evicting respondent No.5 and other encroachers from the bed of Veguru Kaluva in survey Nos.175/3 and 175/4 of Padugupadu Gram Panchayat, Kovur Mandal, SPSR Nellore District, as illegal and arbitrary.

I have heard Mr.V.Roopesh Kumar Reddy, learned counsel for the petitioner, Government Pleader for Revenue (AP) for respondent Nos.
1 and 4 and Mr.S.Siva Bhami Reddy, learned counsel representing Mr.T.V.S.Prabhakar Rao, learned counsel for respondent No.5.

The petitioner pleaded that when irrigation channel viz., Veguru kaluva is passing through Padugupadu Village, of which the petitioner and respondent No.5 are residents, the latter encroached the adjacent land situated in survey Nos.175/3 and 175/4, erected a house and is residing therein. That the house erected by respondent No.5 is causing obstruction to free flow of water and that in spite of the petitioner's repeated representations, the official respondents are not removing the said structure and as a result thereof, others are also raising structures over the irrigation channel bed.

Separate counter-affidavits have been filed by respondent No.3 and respondents Nos.1 and 4. No counter-affidavit is filed by respondent No.5.

In the counter-affidavit filed by respondent No.3, he admitted that respondent No.5 encroached the land belonging to the Irrigation department, erected a thatched house and is residing therein. When

respondent No.5 made attempts to encroach the land, representations were made to the revenue authorities, but no action was taken. That after erection of thatched shed by respondent No.5, Irrigation department issued notice to him, but without removing the shed and vacating the encroached area, respondent No.5 raised hut with brick walls in mud mortar. It is further stated that the petitioner is the neighbour of respondent No.5 and he has constructed a pucca building on the northern side of the hut raised by respondent No.5 leaving a gap of 3.50 feet and that the encroached area is situated between the bank of the drain and the pucca building of the petitioner. It is, however, averred that the encroachment does not in any manner cause interference with the pucca building of the petitioner. It is also stated in the counter-affidavit that Veguru medium drain was improved duly forming flood bank at the left side, higher than the maximum flood level and after such improvement, the drain never witnessed overflow. It is further stated that every effort is being made to evict not only respondent No.5, but also the remaining persons, who encroached the area, along with drain and eviction will be taken with the help of Revenue department in accordance with the legal procedure.

Even in the counter-affidavit filed by respondent No.4 – Tahsildar, Kovur, SPSR Nellore District, he admitted encroachment by respondent No.5. He further stated that on the representation of the petitioner made to respondent No.1, the same was forwarded to respondent No.4, which in turn, was forwarded to the Deputy Executive Engineer, Irrigation Department, with a request to him to enquire into the matter and take further action as the channel and channel bed are being maintained by the Irrigation department. The Deputy Executive Engineer, Drainage
Sub-Division No.2, Kovur, SPSR Nellore District, in his letter, dated 25.03.2010, informed that the Drainage Division, Nellore has no earmarked funds, men or machinery to evict the encroachments and that further action may be taken by the Revenue department at their

level. That in pursuance of the same, endorsement, dated 01.12.2010, was issued to respondent No.5 by respondent No.4 directing him to remove the construction made by him over the bund of Veguru drain, otherwise the Government will remove the same under the Andhra Pradesh Land Encroachment Act, 1905. That thereafter, respondent No.5 caused a legal notice issued to the petitioner stating that the encroachment made by him is purely temporary and that he is ready to remove the wall less pendal, provided the State does not mete out discriminatory treatment among all the encroachers. The counter-affidavit referred to the subsequent correspondence between the Revenue department and the Irrigation department regarding the non-availability of funds, reference to which is unnecessary.

The tenor of the counter-affidavits filed by the Irrigation department and the Revenue department projects a distressing picture. While admitting the encroachment by respondent No.5 and various other persons of the Government land adjacent to the irrigation channel, neither of them have taken any concrete steps for eviction of the encroachers purportedly on the ground of lack of funds. Two Government departments at the helm of administration cannot be permitted to throw the blame on each other. When the whole District administration is vested in respondent No.1, he is not expected to express his helplessness in taking action for eviction of the encroachers on the ground of lack of funds. If the State itself cannot enforce law against its violators, this Court wonders, who else will enforce law. It is the bounden duty of respondent No.1, being the head of the District administration, to ensure eviction of the encroachers of a public property, more so, when such property relates to irrigation channel. Any further laxity on his part in evicting the encroachers is likely to cause damage to the irrigation channel affecting the interests of the farmers' community of the area.

A *mandamus* shall, therefore, issue to respondent No.1 to

forthwith initiate eviction process and see that all the encroachers including respondent No.5 are evicted, after following due process of law, within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is accordingly allowed.

As a sequel to allowing the writ petition, W.P.M.P.No.34532 of 2011 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

18th June, 2015
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