

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.28019, 19872, 20031 and 20395 of 2011

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COMMON ORDER :

As the issue involved in all these writ petitions is one and the same, they are being disposed of by way of this Common Order.

2. **W.P.No.28019 of 2011** is filed stating that the respondents 2 to 5 have constructed a double storied commercial building in premises bearing Nos.2-2-87, 2-2-88, 2-2-89 and 2-2-90 an extent of about 200 sq.yards facing to the National High Way No.63, near Old Bus-stand encroaching the National High Way, without taking any permission from the first respondent Municipal authority. It is stated that the said commercial building is constructed by occupying the public drain, due to which there is no facility of drain water going through the drains and the entire drain water of the nearer localities is flowing on the road. The petitioner filed application before the 1st respondent to furnish the permission order and sanctioned plan of the building of the respondents 2 to 5. The first respondent replied on 25.07.2011 stating that the said documents are not available in their office. It is stated that instead of issuing notices to the respondents 2 to 5 to remove the entire illegal construction which is made by them in the said premises occupying the public road and public drain, the first respondent only issued the notices to remove the illegal constructions a small portions saying that the same is constructed encroaching the road margin. Aggrieved by the same, this writ petition is filed.

3. Counter affidavit is filed by the first respondent in this writ petition stating that the respondents 2 to 5 have constructed the subject premises without obtaining any building permission. The National High Way Authority has proposed to construct the side main drain at the border of NH Division limits i.e., 100 feet road edge and proposed to remove encroachment of the said building and issued notices to the respondents 2 to 5 and that the respondents 2 to 5 have approached this Court and obtained interim direction in W.P.No.19872 of 2011. It is stated that the documents pertaining to the

premises of the respondents 2 to 5 are not available in the respondent as the same was constructed long back. It is stated that the authorities of National Highway Road No.63 approached this office and submitted a letter stating that there are some 63 encroachments found in Korutla town abutting NH 63, 100' feet wide road, the side main drains could not be considered due to encroachments made in certain areas which lead to continuation of the drain already constructed and submitted the list of encroachments, which includes respondents 2 to 5.

4. The respondents 2 to 5 have filed counter affidavit denying the averments in the affidavit filed in support of this petition and stated that the petitioner has no *locus standi* to file the present writ petition and he is a chronic litigant who files the unwarranted and false cases against the local people to fulfill his ulterior motives. The petitioner has filed W.P.No.9373 of 2003 and subsequently the same was withdrawn on 27.03.2003. It is stated that these respondents have not constructed the double storied building, but purchased the same in the year 1999 through document Nos.1512 of 1999, 1513 of 1999 and 1514 of 1999 bearing H.Nos.2-2-86, 2-2-87, 2-2-88 and 2-2-89 respectively from the vendor Jakula Jagadeeshwar. In turn the vendor of the respondents 2 to 5 purchased said property from one Akkaladevi Pushpabai in the year 1996 vide registered document No.758 of 1996. After the date of purchase the respondents 2 to 5 got mutated the said properties in their names vide mutation proceedings No.Roc.No. A 240/2000 dated 11.01.2000 by the 1st respondent. Since then the respondents 2 to 5 are in enjoyment of the properties and are regular in paying the property taxes. It is stated that the first respondent issued provisional orders for the demolition without issuing any show cause notices. The respondents 2 to 5 gave explanation to the first respondent and thereafter approached this Court and obtained interim orders in WPMP No.24065 of 2012 in W.P.No.19872 of 2011. It is stated that the first respondent and National Highway authorities are taking steps to demolish the structures for the purpose of road widening without notifying their lands either under the Land Acquisition Act, 1984 or under the provisions of the National Highways Act, 1956, the vendor of the respondents 2 to 5 has filed W.P.No.29400 of 1997 and respondents therein have not filed any counter. This Court on 09.04.2007 passed final orders in the above writ petition directing the respondents therein

not to demolish the premises of the petitioners therein otherwise than by due process of law.

5. The respondents 2 to 5 herein along with others have filed W.P.Nos. 19872, 20031 and 20395 of 2011 aggrieved by the action of the first respondent in issuing notice No.G1/1135/2010-11, dated 04.06.2011 in respect of the subject premises, wherein the respondents 2 to 5 and others were asked to remove the encroachment within a week on the receipt of that notice.

6. Heard learned counsel for the petitioners, learned Standing Counsel for the first respondent as well as learned counsel for the respondents 2 to 5 in W.P.No.28019 of 2011, who are petitioners in W.P.Nos.19872, 20031 and 20395 of 2011.

7. Learned counsel for the petitioners submits that the respondents 2 to 5 have constructed the building without obtaining any permission from the first respondent Municipality.

8. On the other hand, learned Standing Counsel appearing for the first respondent Municipality submits that since there are encroachments on the National Highway 63, the National Highway authorities are addressing letters regarding encroachments. Pursuant to which, notices have already been served on the respondents 2 to 5 along with others for removal of the constructions made on the encroachments. He further submits that the vendor of the respondents 2 to 5 filed W.P.No.29400 of 1997 and the same was disposed of by order of this Court dated 09.04.2007, wherein it is specifically mentioned that the respondents have to initiate proceedings either under the Land Acquisition Act, 1894 or under the National Highways Act, 1956 and that the respondents were directed not to demolish the premises of the petitioners otherwise than by due process of law. If there is any encroachment on the road margin, it is open for the respondents to take steps in accordance with law. But the respondents have issued notices without mentioning the exact encroachments.

9. In all these writ petitions, though notices were issued by the first respondent in pursuant to the orders issued in W.P.No.29400 of 1997, but without mentioning the extent of encroachment and its nature in some of the notices.

In view of the same, it is open for the official respondents to issue fresh notices to the respondents 2 to 5 in W.P.No.28019 of 2011, who are petitioners in

W.P.Nos. 19872, 20031 and 20395 of 2011, mentioning specifically the extent of encroachment made by them, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, it is open for the respondents 2 to 5 in W.P.No.28019 of 2011, who are petitioners in W.P.Nos. 19872, 20031 and 20395 of 2011 to submit their explanations for the same. The official respondents shall consider the same after giving an opportunity of hearing to the respondents 2 to 5 and take action according to law. Till then *Status quo* shall be maintained.

Subject to the above direction, writ petitions are disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in these writ petitions, shall stand closed.

A.RAJASHEKER REDDY, J

10.06.2015

kvs

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