

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.25642 OF 2012

ORDER :

This petition is filed for a writ of *Mandamus* declaring the action of the respondent Nos.1 to 3 in demolishing petitioner's shop at Ground Floor bearing D.No.20-1-27, Santhi Enterprises, situated at Main road near Super Bazar District Court's Junction, Kakinada, East Godavari, without following due process of law, without issuing any notice, without considering the representations and request of the petitioner and without seeing the orders of various Courts and pendency of the civil matters, as illegal and arbitrary.

The case of the petitioner is that the 4th respondent filed OS.No.282 of 2003 before the VII Additional Junior Civil Judge, Kakinada, against the petitioner seeking to pass a decree for a sum of Rs.6,230/- with interest and also for possession of the plaint schedule property, and the said suit was decreed holding that the plaintiff, who is the 4th respondent herein, is entitled to recover the possession of the plaint schedule property from the defendant (petitioner herein), after evicting the defendant from the plaint schedule property. Aggrieved by the same the petitioner herein filed appeal in AS.No.247/2009 and the same was allowed with costs throughout. Against the same, the 4th respondent preferred Second Appeal vide SA.No.849/2010 which is pending before this Court. While so, when the unofficial respondents interfered with the peaceful possession of the petitioner, the petitioner filed OS.No.120/2002 on the file of II Addl.Junior Civil Judge, Kakinada, against the respondents 5 to 7 and the said suit

was dismissed. Aggrieved by the same, petitioner filed AS.No.182/2009 on the file of II Addl.Senior Civil Judge, Kakinda, and the same was allowed granting injunction to the petitioner. While the things stood thus, the respondents 1 to 3 asked the 5th respondent to give consent for demolition of the aforesaid suit schedule property for widening of the road. In order to overcome the pendency of the matters before this Court and before the Courts below, the respondents 4 to 7 gave their consent to demolish the suit schedule property for widening of the road. In fact, if the municipality demolish the subject property, 1/4th of the shop only will be damaged and in the rest of the portion, the petitioner can continue the business. The petitioner also has no objection for widening of the road. While so, when the respondents 1 to 3 came to the subject premises along with demolition squad and tried to demolish the same basing on the consent given by the respondents 4 to 7 herein, the petitioner requested the official respondents to give breathing time to approach the competent authority for clarification regarding the pendency of the civil suit and also requested not to demolish the subject shop. Petitioner also submitted a representation before the official respondents by enclosing relevant documents. While the things stood thus, on 14.08.2012, the respondents 2 and 3 came to the subject premises along with demolition squad and damaged a part of the petitioner's shop. Aggrieved by the same, present writ petition is filed.

Learned counsel for the petitioner states that the petitioner is a tenant of respondents 5 to 7 and he has no objection for demolition of structures in his occupation to the extent indicated in the master plan for widening of road. But the respondent authorities are trying to demolish the entire shop in collusion with

respondents 4 to 7.

Heard Sri Ancha Panduranga Rao, learned Standing Counsel for respondent-Corporation.

Learned Counsel for respondents 4 to 7 states that they have no objection for widening of road. He also relied on the Judgment dated 03.06.2013 rendered by this Court in WA.No.456, 604 and 614 of 2013.

In the present case though the second appeal vide SA.No.849/2010, filed by the respondents 4 to 7 with regard to the subject premises is pending before this Court, the respondents 1 to 3 are trying to demolish the same. Since the learned counsel for the petitioner states that he has no objection for demolition of structures as consented by the respondents 4 to 7 to the extent indicated in the master plan for widening of the road and since the learned counsel for respondents 1 to 3 states that the respondent authorities are widening the road to the extent indicated in the master plan only, the writ petition is disposed of with a direction to the respondents 1 to 3 to effect the demolition of the subject premises to the extent indicated in the master plan. The respondents 1 to 3 shall effect the demolition only after giving notice to the petitioner clearly indicating the extent of portion that is going to be affected in the demolition.

With the above direction, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

20.07.2015

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