

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.30293 OF 2012

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DATED : 22.04.2016

Between :

Podapati Venkateswarlu S/o.Late Kotaiah,
Age 50 yrs, Occu : Car driver,
R/o.H.No.17-1-6/1, Gayatri Nagar,
Kandukur, Prakasam District.

.. Petitioner

and

Kandukur Municipality,
Rep., by its Commissioner, Kandukuru,
Prakasam District & another.

.. Respondents

This court made the following :

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ORDER :

With the consent of learned counsel for the parties, the writ petition is disposed of at the admission stage.

2. The petitioner claims to be the owner of H.No.17-1-6/1, Gayatri Nagar, Kandukuru, Prakasam District. Petitioner is aggrieved by the notice dated 18.09.2012 directing him to remove the encroachments in the Government land.

3. This notice is challenged on the ground that though it is coined as notice, it is a direction issued to the petitioner to remove the encroachments.

4. It is contended that before passing the said order, no prior notice was issued and no opportunity of hearing was given.

Alleged survey was not conducted in the presence of petitioner and copy of the survey report was not furnished. Therefore, the petitioner is not aware of the contents of the said report. It is further contended that the Field measurement sketch was also not furnished to the petitioner, though those documents are the basis for the impugned order. According to learned counsel for the petitioner, the petitioner is the owner of property and she has relevant documents in support of her claim of ownership. He further submits that earlier the petitioner invoked the jurisdiction of this Court in W.P.No.4470 of 2012. The said writ petition was disposed of by order dated 17.02.2012 directing the respondents not to interfere with the peaceful possession and enjoyment of the subject property without following the due process of law.

5. Alleging that the respondent-Municipality has violated the said order, C.C.No.472 of 2012 was filed. In the counter affidavit filed in the said contempt, it was deposed that no further action was taken after the respondent came to know about the order passed by this Court. Recording the same, the contempt case was closed.

6. Learned counsel for the petitioner therefore, submits that in view of the earlier orders and since the property belongs to the petitioner, the respondent-Municipality ought to have followed due procedure before holding that the petitioner is in unauthorized occupation and unless it is first found that the petitioner is in unauthorized occupation, there cannot be any order of eviction from the property.

7. Learned standing counsel for the respondent-Municipality submits that the subject property is a Government land. It is classified in the revenue

records as "Donka Poramboke", in Sy.No.889/A. The municipal road is in Sy.No.889/A and the petitioner's property is in Sy.Nos.919/A and 920/C. Thus, the subject land do not belong to the petitioner and the petitioner is making false claim. It is also submitted that in the survey conducted this land was identified as belonging to Government. The concerned authority has also prepared measurement sketch which clearly disclose that petitioner is in unauthorized occupation of the Government land. He further submits that the Municipality has decided to construct storm water drain from Prasanthi Nagar Colony, to Gudluru Road junction under 13th Finance Commission Grants. Tenders were finalized and work order was issued to the contractor on 01.10.2011. This drain passes through the northern boundary of the petitioner's site which is a municipal road. The construction of storm water drain is necessary to avoid stagnation and smooth flow of drainage water. Water stagnation is resulting in breeding of mosquitoes and causing health problems to the people living in that locality.

8. As seen from the material on record, in W.P.No.4470 of 2012 this Court directed to follow due process before taking coercive action against the petitioner. It is not in dispute that no prior notice or opportunity was accorded to the petitioner before issuing the impugned order. The respondent-Municipality could not have taken such coercive action without following due process, more so, when a direction was issued to follow the due process in W.P.No.4470 of 2012 and in the contempt case respondent has categorically stated that no further action is taken after the orders passed by the Court.

9. At this stage, learned counsel for the petitioner submits that the petitioner is willing to go before the respondent-Municipality by submitting a representation along with all the relevant documents in support of his claim and the respondent may be directed to consider the same after giving due opportunity to the petitioner. Learned counsel also submits that the Municipality may also furnish all the relevant documents which are relied upon to hold that the petitioner is in unauthorized occupation of the Government land. Learned counsel representing the Municipality has not opposed the request of the petitioner to make a representation.

10. Having regard to the said submission the writ petition is disposed of with the following directions :

- (i) The notice dated 18.09.2012 shall be treated as a show cause notice.
- (ii) The petitioner shall submit a representation within one week from

the date of receipt of copy of this order for supply of documents which are referred to in the counter affidavit. On submission of such representation, the Commissioner, Kandukuru Municipality shall furnish all required documents as mentioned in the counter affidavit within a period of one week thereafter. After furnishing of the documents, the petitioner shall file his explanation within a further period of two weeks enclosing all the relevant documents in support of his claim that the property in issue is a private property of the petitioner and that he is not in unauthorized occupation of the government land.

(iii) On receipt of explanation submitted by the petitioner, the Commissioner shall fix a date for personal hearing by intimating the date in advance to the petitioner and after affording due opportunity, shall pass final orders within a further period of six (6) weeks from the date of receipt of explanation.

11. Until the final orders are passed as directed above, the respondent-Municipality shall not take any coercive action against the petitioner. Having regard to larger public interest, the parties are directed to adhere to the time schedule prescribed and the petitioner shall cooperate for early conclusion of the proceedings. It is needless to observe that it is always open to the petitioner to work out his remedies as available in law, aggrieved by the decision of the respondent-Municipality. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

22nd April, 2016

Note : Issue c.c. in one week

B/o.

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