

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.10818 and 9709 of 2012

COMMON ORDER:

These two writ petitions are filed under Article 226 of the Constitution of India seeking the following relief/s:

WP.No.10818 of 2012

'to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondents 1 and 2 in not taking further course of action on the basis of the notice in Rc.No.150/2009 dt.21-02-2012 and not taking action to demolish and remove the illegal and unauthorised construction made by respondents 3 and 4 as illegal, arbitrary and contrary to law and consequently direct the respondents 1 and 2 to take further course of action on the basis of the said notice, demolish and remove the illegal and unauthorised construction made by the respondents 3 and 4 at Mylavaram village, Krishna District and pass such other order'

W.P.No.9709 of 2012

'..to issue a writ, one in the nature of a Writ of Mandamus or any other appropriate Writ, direction or order declaring the action of the action of the 3rd respondent in issuing the notice R.C.No.150/2009 dated 21.02.2012 seeking to demolish of the petitioner's house bearing no.9-65 situated at Opposite to Post Office Road, Mylavaram Grampanchayat, Mylavaram Mandal, Krishna District as illegal, arbitrary and violative of Article 14, 16 and 21 of Constitution of India and consequently set aside the proceedings of the 3rd respondent in R.C.No.150/2009 dated 21.02.2012 and pass such other order....'

[Reproduced verbatim]

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondents 3 and 4 in WP.No.10818 of 2012. The said respondents are the petitioners in the other WP.No.9709 of 2012. The parties shall hereinafter be referred to as they are arraigned in W.P.No.10818 of 2012 for convenience and clarity.

3. The case of the writ petitioner in WP.No.10818 of 2012 is that the respondents 3 and 4 therein have removed the compound wall existing between the triangular bit and the site of the respondents 3 and 4 and had converted the rooms constructed for residential accommodation into shops by opening the shutters on the Southern side and caused hurdles to the writ petitioner for having access to his building through the said triangular bit between the Southern side road (galli bazaar) and the building of the respondents 3 and 4. The writ petitioner, in fact, also filed a suit OS.No.123 of 2010 on the file of the Court of the learned Junior Civil Judge, Mylavaram and obtained a temporary injunction order in IA.No.59 of 2010 in the said suit. The grievance of the said writ petitioner is that the respondents 1 and 2, having issued a notice dated 21.02.2012, are not taking further course of action on the basis of the said notice and are not demolishing and removing the illegal and unauthorised constructions made by the respondents 3 and 4.

4. The respondents 3 and 4 had filed the other writ petition (WP.No.9709 of 2012) challenging the action of the 3rd respondent therein i.e., Panchayat Secretary in issuing the aforementioned notice as illegal and arbitrary and to set aside the said notice *inter alia* stating that they had obtained approval and permission for constructions and that they had not deviated from the building plan approved and had made constructions in accordance with the approved plan and that they are paying the taxes to their property and that the writ petitioner in WP.No.10818 of 2012 having filed the said suit without any manner of right had influenced the Panchayat Secretary without any claim over the subject property and had got issued the impugned notice and the said notice is, therefore, liable to be set aside. The respondents 3 and 4 had also urged that after receiving the impugned notice, they had approached the Panchayat Secretary and submitted an explanation, but, the same is not being considered and that the Panchayat Secretary is proceeding to demolish the properties without following the due procedure.

5. The learned counsel for the petitioner in WP.No.10818 of 2012 while making submissions in line with the pleadings would further submit that in view of the submissions made on behalf of the respondents 3 and 4 that their explanation is not being considered by the Panchayat Secretary concerned, both the writ petitions may be disposed of and the notice *vide* Rc.No.150/2009 dated 21.02.2012 impugned in WP.No.9709 of 2012 may be set aside with a direction to the Panchayat Secretary to consider and dispose of the explanation said to have been submitted by the respondents 3 and 4 by passing appropriate orders and then proceed further in the matter in strict accordance with the procedure established by law. The learned counsel for the respondents 3 and 4 while reiterating that there is a civil suit pending between the parties would further state that the above course suggested by the learned counsel would sub-serve the ends of justice and that, therefore, the respondents 3 and 4 have no objection if the writ petitions are disposed of with directions as sought for by the learned counsel for the writ petitioner in WP.No.10818 of 2012.

6. Recording the submissions, both the writ petitions are disposed of. Accordingly, the notice in Rc.No.150/09 dated 21.02.2012 issued by the Panchayat Secretary to the writ petitioners in WP.No.9709 of 2012 is hereby set aside directing the

said authority to consider the explanation of the said writ petitioners and dispose of the same in strict accordance with the procedure established by law, and after giving opportunity of hearing to both the parties, however, within a period of one (01) month from the date of the receipt of a copy of this common order. It is made clear that subject to the orders that may come to be passed on the explanation of the petitioners in WP.No.9709 of 2012/respondents 3 and 4 in WP.No.10818 of 2012, the Panchayat Secretary, Mylavaram Gram Panchayat is at liberty to proceed further in the matter in regard to the subject constructions of the said petitioners, if necessary and if warranted, however, in strict accordance with the procedure established by law.

There shall be no order as to costs.

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

18.01.2016
Vji

M. SEETHARAMA MURTI, J