

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.23377 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the action of the respondents 3 and 4 in acquiring part of petitioner's patta land in Survey No.159B of Gudikallu village, Yemmiganur Mandal, Kurnool District for widening the existing road without following due process of law as illegal and arbitrary and consequently direct the 3rd and 4th respondents not to proceed with widening the road by acquiring part of the petitioner patta land and to pass such other necessary orders.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj and Rural Development and Sri G.Seshadri, learned standing counsel for Gram Panchayat.

The case of the petitioner is that he has been in possession and enjoyment of an extent of Ac.1.52 cents of agricultural land in Sy.No.159B of Gudikallu village, Yemmiganur Mandal of Kurnool District. The grievance of the petitioner is that the third respondent herein at the behest of the local MLA is making hectic attempts to dispossess him from his land on the pretext of widening of the road.

It is not the case of the respondent that the petitioner is not the owner of an extent of Ac.1.52 cents in Sy.No.159B of Gudikallu village. No doubt, the 5th respondent is entitled to lay roads in the villages for public purpose. That does not mean the 5th

respondent is entitled to take possession of the land of any individual high handedly without following due procedure. It is a settled proposition of law that a person, who is in possession of the land, though an encroacher, cannot be dispossessed except by due process of law (**see East India Hotels Ltd v Syndicate Bank**^[1], **Meghmala v G.Narasimha Reddy**^[2] and **Maria Margarida Sequeria Fernandes v Erasmo Jack De Sequeria (Dead) through L.Rs**^[3]).

The learned counsel for the petitioner has drawn my attention to Section 59 of the Andhra Pradesh Panchayat Raj Act, 1994. A perusal of Section 59 mandates that the Gram Panchayat is not entitled to take possession of the property of an individual without following due procedure as contemplated under Land Acquisition Act.

Learned counsel for the 5th respondent in all fairness submitted that no notification was issued to acquire the land of the petitioner.

Having regard to the facts and circumstances of the case and also the principle enunciated in the decisions cited supra, the respondents are hereby directed not to take possession of the petitioner's land in an extent of Ac.1.52 cents in Survey No.159B of Gudikallu village, Yemmiganur Mandal, Kurnool District without following due process of law.

With the above direction, the writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, in this writ petition shall stand closed.

**T.SUNIL
CHOWDARY, J**

20.07.2016
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[\[1\]](#) 1992 Supp (2) SCC 29

[\[2\]](#) 2011 (2) ALT 8 (SC)

[\[3\]](#) AIR 2012 SC 1727