

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WRIT PETITION No.8732 of 2012

ORDER:

This Writ Petition is filed to declare the proceedings in Rc.No.3353/2011/J dt.10-02-2012 issued by the 3rd respondent addressed to the 4th respondent as arbitrary and illegal, and for a direction to respondents not to interfere with the peaceful possession and enjoyment of the petitioners in respect of the subject property.

2. The petitioners claimed to be absolute owners and possessors of premises of extent 610 sq. yards in Sy.No.129 in Narasipatnam Mandal, Visakhapatnam District having purchased the same under registered sale deed Doc.No.1629/1974. Petitioners proposed to construct a shopping complex in the land and obtained permission from Narasipatnam Gram Panchayat vide reference No.510/2004, which was got renewed vide proceedings No.223/2005 dt.31-12-2005. According to petitioners, they could not commence the construction as per the said approval. Later they again applied for construction permission in 2009 and the same was granted on 16-12-2009.

3. Petitioners contend that when they commenced construction of the compound wall, some petty vendors/wooden shopkeepers, who had encroached the

road abutting the Sub-Collector's office compound wall, opposed the construction. Petitioners then applied to the Tahasildar, Narasipatnam to carry out a survey as per records and fix up a boundary on the Western side.

4. Since no action was taken on the petitioners' representation dt.29-04-2010, the 1st petitioner filed W.P.No.25006 of 2010, but the said Writ Petition was dismissed on the ground that there is no need to sub-divide the said land since it was already done earlier and earmarked on the ground.

5. Petitioners thereafter constructed a shopping complex after obtaining approval of the Gram Panchayat, Narasipatnam vide reference No.116 dt.04-07-2011.

6. Petitioners contend that thereafter a false complaint was lodged to the 3rd respondent alleging that the petitioners had encroached the BT road constructed by the Gram Panchayat and some news item were published in the local news papers falsely alleging that the petitioners had encroached into the BT road.

7. Thereafter an enquiry was directed by 3rd respondent and proceedings dt.23-11-2011 were addressed by 3rd respondent to the Tahasildar, Narasipatnam.

8. Petitioners contend that the Tahasildar submitted a

false report stating that an extent of Ac.8.88 cents in Sy.No.129 was classified as Government dry land, and thereafter the 3rd respondent issued the impugned proceedings to the 4th respondent to take necessary action to cancel the building permissions already granted.

9. Petitioners contend that this action is arbitrary and illegal and 3rd respondent has no jurisdiction to direct the 4th respondent to take any action for removal of any encroachments or buildings.

10. Learned counsel for petitioners contended that the petitioners had not encroached any Government land and the order passed by 3rd respondent cannot be sustained.

11. Counter-affidavit is filed by 3rd respondent supporting the orders passed by him, but admitting that the land in question is located in Narasipatnam Gram Panchayat, which had been upgraded as Municipality, and stating that it is only the 4th respondent who can take action for removal of any encroachments in lands which vest with the Municipalities and that was why the impugned letter was issued.

12. If the petitioners had really encroached any land which vests with the 4th respondent, it is for the 4th respondent to take action in accordance with the

provisions of A.P. Municipalities Act, 1965 and it is not for the 3rd respondent to intervene in the matter and give directions to the 4th respondent.

13. Therefore the Writ Petition is allowed and the impugned proceedings dt.10-02-2012 in Rc.No.3353/2011/J issued by 3rd respondent are set aside. However, this will not preclude the 4th respondent from taking appropriate action after issuing notices to petitioners in case the 4th respondent comes to the *prima facie* conclusion that the petitioners had encroached any land which vests in the 4th respondent Municipality. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-06-2016

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