

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.24409 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 second respondent in issuing the notice R.O.C.No.45 of 2016, dated 13.07.2016, as illegal and arbitrary and consequently set aside the same.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj and Rural Development.

The case of the petitioner is that his father purchased land an extent of 48 feet from one China Mahaboob Saheb under a registered sale deed dated 29.07.1981 and another extent of 98.04 square yards from Katoju Vasudeva Chary under a registered sale deed dated 04.11.1989. The petitioner got the property under a settlement deed and running a medical shop as well as stickering shop. While things stood thus, the second respondent – Gram Panchayat issued a show-cause notice dated 13.07.2016 directing the petitioner to vacate the premises within seven days.

A perusal of Section 59 of the Andhra Pradesh Panchayat Raj Act, 1994 clearly demonstrates that the Gram Panchayat is not entitled to acquire the land of an individual without following due procedure as contemplated under Land Acquisition Act.

The second respondent is not entitled to evict the petitioner from the premises in question 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]).**

Having regard to the facts and circumstances of the case and also the principle enunciated in the decisions cited supra, the second respondent is hereby directed not to evict the petitioner from the premises in question i.e., shops in Door No.7-334, opposite to Big Masjid, Dachepalli Village and Mandal, Guntur District without following due process of law.

Accordingly, the Writ Petition is disposed of. No costs.

Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 26.07.2016
lvd

^[1] 1992 Supp (2) SCC 29

^[2] 2011 (2) ALT 8 (SC)

^[3] AIR 2012 SC 1727