

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.9287 of 2009

ORDER :

This Writ Petition is filed challenging the proceedings dt.18.04.2009 of 1st respondent in rejecting the request of petitioners to sanction building permission on the ground that a Civil Suit, viz., O.S.No.73 of 1995, is pending before the Civil Court.

2. The petitioner contends that petitioner is in possession and enjoyment of extent of Acs.6.96 cents in Sy.No.321 of Kondapalli Village, Ibrahimpatnam Mandal, Krishna District; that the 2nd respondent's family had filed a suit O.S.No.73 of 1995 against him before the Senior Civil Judge, Vijayawada seeking their eviction by removing their thatched houses and also sought injunction; that initially temporary injunction was granted, but subsequently the interim application was closed; and that when petitioners made an application seeking permission to construct houses by the impugned order, the 1st respondent refused to grant permission on the ground that a Civil Suit filed by 2nd respondent is pending.

3. The learned Standing Counsel for 1st respondent has not been able to point out any provision of law permitting the 1st respondent to reject the application for

building permission on the ground that civil litigation is pending in a Civil Court.

4. The 2nd respondent has filed a counter-affidavit disputing the title of petitioners to the subject property. However, the counsel for 2nd respondent states that the suit filed by 2nd respondent against petitioners continues to be pending, even though twenty years have elapsed since the suit has been filed. He however states that the petitioners have completed construction of *pucca* buildings.

5. The counsel for petitioners stated that 1st petitioner's house has collapsed and he wanted to construct a house in his own place and needed permission; 2nd petitioner also wanted to construct a floor as the existing area was not sufficient and in bad shape; petitioner nos.3 to 5 constructed houses without permission; and they are all facing threat from 1st respondent of taking coercive steps against their structures. The 6th petitioner has not constructed any house, and the 7th petitioner is a Ward Member who has taken up the issue on behalf of respondents against 1st respondent. It is also stated that as far as 8th petitioner is concerned, his application for grant of permission for 1st Floor was refused.

6. From the facts narrated above, it is clear that a Civil Suit, viz., O.S.No.73 of 1995, initiated by 2nd respondent against petitioners, is pending before the Principal Senior Civil Judge, Vijayawada. The said suit has been pending for almost twenty years. The petitioners cannot be deprived of permission to make constructions merely because a civil suit is pending.

7. There is no provision in the Andhra Pradesh Gram Panchayat Act, 1994 for rejecting applications for permission to build houses on the ground that civil litigation is pending between the applicants seeking permission and third parties.

8. Therefore, the action of 1st respondent in refusing permission to petitioners to make construction is clearly arbitrary, illegal, violative of Articles 14 and 300-A of the Constitution of India.

9. Therefore, the Writ Petition is allowed and the 1st respondent is directed to grant permission to petitioners for making constructions without reference to the pendency of the above civil suit.

10. Any such permission granted by 1st respondent or constructions made by petitioners in the lands in their occupation would be subject to the result in O.S.No.73 of 1995.

11. The 1st respondent shall also pay costs of Rs.500/- to each of the petitioners within a period of four (04) weeks from the date of receipt of a copy of the order.

12. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-02-2016

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