

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.36120 OF 2012

ORDER:

This writ petition is filed against the alleged action of the 2nd respondent – Gram Panchayat, in attempting to dispossess the petitioner from the house bearing door No.3-197, situated at Gullapalli Village, Cherukupalli Mandal, Guntur District.

2. Heard learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for the respondents 1 and 2 and Sri Ravi Cheemalapati, learned standing counsel for the 3rd respondent.

3. According to the petitioner, he is the absolute owner and possessor of the house site bearing door No.3-197, admeasuring Acres 0.03 cents situated within the limits of Gullapalli Gram Panchayat area, which is classified as Gramakantam. It is further pleaded that the said property has been in possession of the family of the petitioner for quite a long time. It is further pleaded that the petitioner herein raised a thatched hut in the said land and except the said house, he has no other house. It is alleged in the writ affidavit that the 3rd respondent sent his servant to the petitioner's house on 20.11.2012 and asked him to vacate the

premises within seven days. It is further pleaded that the 3rd respondent is resorting to the impugned action without following due process of law.

4. This Court, while ordering notices, directed that the constructions raised by the petitioner shall not be demolished by the local authority. Responding to the notices issued by this Court, a counter affidavit deposited by the Panchayat Secretary of the 3rd respondent Gram Panchayat is filed stating *inter alia* that the petitioner is an encroacher of the land belonging to the Gram Panchayat and taking advantage of the lenient view of the committee of the Gram Panchayat, petitioner has encroached the said land overnight and laid foundations. The counter further states that the respondent issued a notice on 22.08.2012 and asked him not to raise any residential house in the said land and thereafter, on 29.10.2012, Gram Panchayat requested the Tahasildar to fix the boundaries. In pursuance of the same, the Tahasildar issued combined sketch after fixing boundaries on 28.11.2012. It is further stated that the petitioner received the notice on 22.08.2012 and sent a reply through his Advocate on 09.11.2012, stating that his ancestors occupied the said land and the same is being used by the petitioner by constructing tin shed. It is further stated in the counter that the petitioner herein is a tenant of door No.3-197 of Gullapalli Village, which belongs to one Battu Hrishikesavarao,

S/o.Rataiah and the said house is adjacent to the land belonging to the Gram Panchayat and the petitioner herein is no way concerned with the subject land and neither the petitioner nor his grandfather occupied the same.

5. From the above, it is clear that the petitioner herein is claiming right in the subject property on the ground of alleged long standing possession. On the otherhand, it is the categoric case of the 3rd respondent – Gram Panchayat that the said land belongs to the Gram Panchayat. In the considered opinion of this Court, the said controversy cannot be resolved by this Court under Article 226 of the Constitution of India.

6. Therefore, this writ petition is accordingly dismissed, leaving it open for the petitioner herein to avail the common law remedy open to him, if he is advised to do so.

7. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

20.12.2016
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A.V.SESHA SAI, J