

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

WRIT PETITION No.31147 OF 2012

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, assails the action of the respondent authorities in issuing notice dated 22.08.2012, asking the petitioner to remove the constructions made on the drainage bund.

2. Heard Sri B.V.S.S.B.K.Ranjit, learned counsel for the petitioner and learned Government Pleader for the respondents 1 to 3.

3. According to the petitioner, he is a resident of Anaparthi Village, East Godavari District and belongs to socially and economically backward classes and he is in possession and enjoyment of the Government Waste land since 40 years by constructing thatched hut and constructed house with cement asbestos sheets in an extent of 100 square yards situated at Anaparthi Village and Mandal, East Godavari District. It is further stated that the said land has been in possession and enjoyment of the petitioner's family for the last 40 years and the said two houses have electricity connection bearing No.5860/5460, standing in the name of the father of the writ petitioner herein and the said houses also allotted numbers by the Gram Panchayat. It is further

stated that the petitioner herein is an agricultural coolie and has no other source of income. It is alleged in the writ affidavit that the 3rd respondent issued the notice due to the pressure exerted by the rivals for political reasons.

4. A counter affidavit deposed by the Assistant Executive Engineer, Drainage Section, Pedapudi, East Godavari District, is filed, denying the averments in the affidavit filed in support of the writ petition. The said counter denies the averment as regards the possession and enjoyment of the petitioner for the last 40 years. It is further stated in the said counter affidavit that the subject property is a drainage bund and is meant for irrigation purposes like inspection, modernization and maintenance of the drain. It is further stated that even according to the petitioner, he got electricity connections, one in the year 2000 and another in the year 2011 and he failed to prove his possession for 40 years. It is also the averment in the counter affidavit that the land in question is not unclaimed waste land and is classified as irrigation land, admeasuring 30 links. It is also stated that the 3rd respondent is not the competent authority to consider the occupation, financial and social status of the petitioner herein. It is further stated that the constructions made by the petitioner herein is causing obstruction for free flow of water, as such, the 3rd respondent issued notice to the petitioner herein and the said issuance of notice is only to

protect and maintain the drain and its bund, but not under pressure and compulsion as alleged.

5. Even according to the petitioner herein, the said land is a government land. There is a dispute with regard to the period of occupation and the same cannot be gone into in the present writ petition. If the respondent authorities intend to take any action for removal of the alleged encroachments, they are required to follow the procedure as per law.

6. A perusal of the notice impugned shows that the 3rd respondent herein asked the petitioner to remove the constructions made. Therefore, having regard to the facts and circumstances of the case, this Court is of the considered opinion that the end of justice would be served if the respondents are directed to follow due procedure as per law.

7. During the course of arguments, it is submitted by the learned counsel for the petitioner that the petitioner herein is a person living below poverty line and he has no other properties, either movable or immovable, and it is further submitted that the petitioner herein will make an application for grant of patta and the same may be directed to be considered in accordance with law subject to the eligibility of the petitioner herein.

8. For the aforesaid reasons, writ petition is disposed of, directing the respondents herein to follow due process of law

for the purpose of the evicting the petitioner from the subject property. If any application is made by the petitioner herein for grant of patta, the same may also be considered in accordance with law.

9. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

08.12.2016
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