

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.34966 and 34977 of 2016

COMMON ORDER:

Since the issue involved in these two writ petitions is one and the same, they are being disposed of by way of common order.

2. W.P.No.34966 of 2016 is filed seeking to declare the action of the 2nd respondent in issuing Encroachment Notice No.G/243/2016, dated 28.09.2016, under Sections 153 and 192 of the Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act'), without taking into consideration the explanation of the petitioner, dt.30.09.2016, and trying to demolish the structures in the premises No.1-3-304/A1, as arbitrary and illegal and consequently, set aside the same.

3. W.P.No.34977 of 2016 is filed seeking to declare the action of the 2nd respondent in issuing Encroachment Notice No.G/243/2016, dt.28.09.2016 under Sections 153 and 192 the Act, without taking into consideration explanations of the petitioner, dt.30.09.2016 and 04.10.2016 and legal notice, dated 05.10.2016, and trying to demolish the structures in premises Nos.1-3-2 to 1-3-4, as arbitrary and illegal and consequently, set aside the same.

4. The case of the petitioner in W.P.No.34966 of 2016 is as follows:

The petitioner Sangham, represented by its Secretary Thota Pentaiah, was formed in the year 1965 for the welfare of Vysya community. The said Sangham cater the needs of Vysya community people as well as the general public by giving free

education and food to poor people by collecting donations from the Vysya community people. The petitioner desires to construct a office building and function hall to cater the needs of villagers of Metpally, purchased land to an extent of 1677 square yards (138, 300, 612.5 and 627) in Survey No.767/A of Metpally village under a registered sale deed for a valuable consideration. At the time of purchase of land, it was an open land and the water was stagnating here and there. On the western side of the subject land, there was a three storied building constructed by Sambari's family. In the said building, there was a rain water channel in a private land and was exclusively used by the persons in the said building as rain water drain.

The petitioner obtained permission from the then Gram Panchayat, Metpally village in the year 2003 for construction of ground floor and first floor; that he also constructed Kalyanamandapam consisting of ground floor and first floor in the year 2003 and constructed compound wall around the land; that thereafter, the petitioner constructed rain water flow, which is flowing from three storied building where they have constructed their own rain water flow; that due to rapid growth of population in Metpally Village, the Municipal authorities connected the public drain to the private drain, where the petitioner laid a concrete roof over the same; that at that time, the authorities said that in case any Master plan is going to be implemented they will divert the said flow of water from petitioner private land by constructing a road side drain; that the main entrance, which is erected to enter into the petitioner building, is from the said roof only and since 2001 onwards the said land exclusively belongs to the petitioner; that the then Gram Panchayat, Metpally village or the 2nd

respondent without acquiring the drainage portion of the land, which is exclusively in the possession of the petitioner, connected the sewerage lines of the general public and utilizing the same as if the same was constructed by them.

While things stood thus, the 2nd respondent constructed a new underground drain towards northern side of petitioner compound wall and laid a concrete roof in the year 2014. The Municipality is not in a position to pay compensation to the petitioner land, they have constructed the new one and all the sewerage lines of the general public were connected to the new drainage. The 2nd respondent constructed a new underground covered drainage and the same is being used as road. Now the 2nd respondent issued impugned notice, 28.09.2016, alleging that the petitioner laid a slab on the drain and compound wall and directed him to remove the same. The petitioner submitted explanation on 30.09.2016, which was received by the 2nd respondent on 01.10.2016. Without considering the same and passing any final order, the respondents want to demolish the structures of the petitioner building.

5. The case of the petitioner in W.P.No.34977 of 2016 is as follows:

The total extent of land in survey No.771 is Ac.1.08 guntas, out of which father of the petitioner purchased land to an extent of 720 square yards. Thereafter, father of petitioner obtained permission for construction of ground floor and first floor. Subsequently, father of petitioner obtained permission for construction of 2nd floor in the subject land and accordingly he constructed the same in accordance with the sanctioned plan. The municipal authorities allotted door numbers for all the floors.

Towards northern side of the petitioner building, there was a rain water drain from west to east side through the land of the petitioner. In the year 1972 when the permission for construction was obtained, father of the petitioner felt that instead of closing the same, covered the same with a roof facilitating to flow the water. The said rain water flow is exclusively in the private property and the same is not belongs to either to the then Gram Panchayat or the 2nd respondent, which is within the compound wall of the petitioner. Due to rapid ground of population in Metpally village, the Municipal authorities connected the public drain to petitioner rain where petitioner laid a concrete roof over the same. At that time, the father of petitioner did not make any objection and authorities requested stated that in case any Master plan is going to be implemented they will divert the same by constructing a road side drain. The main door, which is erected to enter into the petitioner house, is from the said roof only and since 1972 the said land belongs to the petitioner. The then Gram Panchayat, Metpally village or the 2nd respondent without acquiring the petitioner land, which is exclusively in the possession of the petitioner, connected sewerage lines of the general public and utilizing the same as if the same was constructed by them. The then Gram Panchayat or the 2nd respondent without initiating land acquisition proceedings for acquisition of petitioner's land, connected sewerage lines to petitioner's rain water flow. Aggrieved by the same, the petitioner filed W.P.No.21267 of 2011 and this Court directed the respondents therein not to interfere with the possession of the petitioner without following due process of law. The said writ petition is pending.

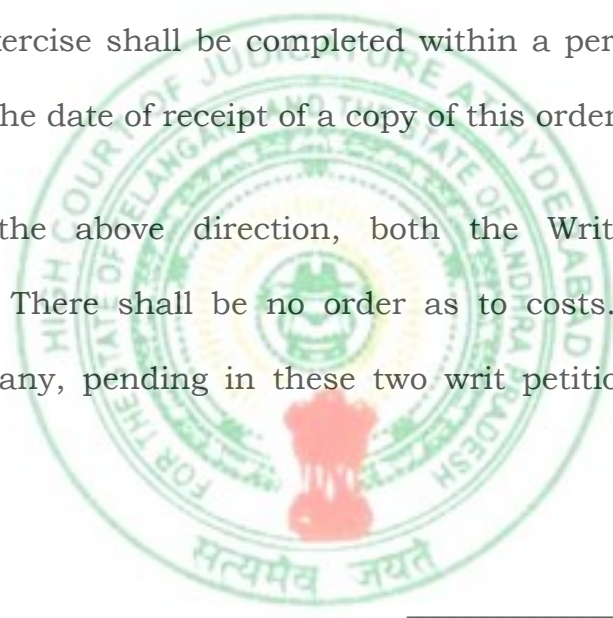
While things stood thus, the 2nd respondent constructed a new underground drain towards northern side of compound wall of the petitioner and laid a concrete roof. The same was constructed by way of resolution in the year 2014. The municipality is not in a position to pay compensation to the petitioner, they constructed a new sewerage lines for general public. Now the 2nd respondent issued the impugned notice, dated 28.09.2016, alleging that the petitioner constructed a slab on the drain water channel and compound wall and directed him to remove the same. The petitioner submitted explanations, dated 30.09.2016 and 04.10.2016. The 2nd respondent without considering the explanations and passing final orders is trying to demolish the structures.

6. Learned counsel for the petitioners submits that the petitioners in both the writ petitions have constructed houses after obtaining permission from the authorities concerned; that as the water is stagnating here and there, the petitioners have constructed rain water channels in their own lands and laid a slab and compound wall on drainage nala; that the respondent authorities without having any right are trying to remove the same and that issuance of encroachment notices are unwarranted as respondent authorities have not issued any notice to the petitioners before removal of structures.

7. On the other hand, learned Standing Counsel for the respondents submits that the petitioners in both the writ petitions were given notices and they submitted explanations and after receipt of the same only, the impugned encroachment notices were issued.

8. In the facts of the present case, it is clear that as on date no orders are passed by the respondent authorities. Action can be taken to demolish only when the explanations submitted by the petitioners are not satisfactory. As such, till the explanations submitted by the petitioners are considered and necessary orders are passed in accordance with law, after giving opportunity to the petitioners, the respondent authorities shall not remove either the compound wall or the drain constructed by the petitioners. However, considering the importance of the matter and considering the fact that the petitioners have already submitted explanations, the entire exercise shall be completed within a period of four (04) weeks from the date of receipt of a copy of this order.

9. With the above direction, both the Writ Petitions are disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these two writ petitions shall stand closed.



OCTOBER 18, 2016

Note:

Issue C.C in one week.

(B/o)

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CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



WRIT PETITION Nos.34966 and 34977 of 2016

Date: 18.10.2016

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