

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.27410 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 third respondent in issuing impugned order vide Lr.No.42M, dated 30.07.2016 directing the petitioner to remove his residential house bearing Dr.No.19/592/5 at Masanik Ground, Mittoor, Chittoor Mandal and District, within fifteen days, as being illegal and arbitrary.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Irrigation and Command Area Development (Andhra Pradesh) appearing for respondents 1 to 3.

3. A perusal of the record reveals that the petitioner claims that he occupied an extent of 0.1½ cents at Masanik ground, Mittoor, Chittoor Mandal and District about three decades back. The petitioner also constructed a pucca house in that area. A perusal of the record further reveals that the Municipal Corporation allotted door No.19/592/5 to the petitioner's house and the petitioner has been paying municipal taxes. The petitioner also obtained AADHAR Card in respect of the house bearing No.19/592/5. While so, on 30.07.2016, the third respondent issued a notice to the petitioner to vacate the house within 15 days, failing which, they will demolish the same.

4. The contention of the learned counsel for the petitioner is that the respondents have not followed the procedure as contemplated under law. The fact remains that the respondents have not issued show cause notice calling for the explanation of the petitioner. The third respondent straight away issued eviction notice, which is not sustainable either on facts or in law. The fact remains that the petitioner has been in possession and enjoyment of the house bearing Dr.No.19/592/5 since long time. Even assuming but not conceding

that the land belongs to the Irrigation Department, they have to follow the procedure. It is needless to say even an encroacher cannot be evicted without following due procedure (**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]).

5. Having regard to the facts and circumstances of the case, the respondents are hereby directed not to evict the petitioner from the house bearing Dr.No.19/592/5 and demolish the same without following due procedure.

6. With the above direction, the writ petition is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

T.SUNIL CHOWDARY, J

August 16, 2016.

Note: Issue C.C. by tomorrow.

B/o. Rns.

^[1] 1992 Supp (2) SCC 29

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

^[3] AIR 2012 SC 1727