

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.27062 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 respondents in making an attempt to demolish

Sri Anjaneya Swamyvari Temple, and Coffee Hotel-cum-Net Center constructed in an extent of 50 square yards bearing Door No.3-143 in 2nd Ward of Peddapadu Village, West Godavari District, as arbitrary and illegal.

2. Heard the learned counsel for the petitioner, the learned Government Pleaders for Panchayat Raj and Rural Development, Roads and Buildings, Revenue (Andhra Pradesh), and the learned Standing Counsel for the Gram Panchayat.

3. A perusal of the record reveals that the petitioner constructed Sri Anjaneya Swamyvari Temple, and Coffee Hotel-cum-Net Center in an extent of 50 square yards in Peddapadu Village, West Godavari District. The Gram Panchayat also allotted Door No.3-143 to the Coffee Hotel-cum-Net Center of the petitioner. A perusal of the record further reveals that the petitioner filed O.S.No.451 of 1995 on the file of the I-Additional Junior Civil Judge, Eluru against respondent No.9 for declaration and consequential injunction. The trial Court decreed the suit on 23.08.1999. The petitioner also filed O.S.No.431 of 2001 on the file of the I-Additional Junior Civil Judge, Eluru against respondent No.9 for declaration and consequential injunction. The trial Court allowed the suit on 29.07.2002. No material is placed before this Court whether respondent No.9 has preferred any appeal challenging the decrees and judgments in O.S.No.451 of 1995 and O.S.No.431 of 2001. The fact remains that the petitioner has been in possession and enjoyment of the property in question.

4. The learned Government Pleader for Roads and Buildings submitted that the petitioner encroached Roads and Buildings Department land and constructed Sri Anjaneya Swamyvari Temple, and Coffee Hotel.

5. Whether the petitioner is the owner of the property or encroacher of the property is purely a disputed question of fact, which cannot be gone into while exercising the jurisdiction under Article 226 of the Constitution of India. Even assuming, but not conceding, that the property belongs to Gram Panchayat, respondent No.9-Gram Panchayat is not entitled to evict the petitioner without following due procedure as contemplated under Section 98 of the Andhra Pradesh Panchayat Raj Act, 1994. Even assuming, but not conceding, that the property belongs to Roads and Buildings, it has no right whatsoever to evict the petitioner without following due procedure.

6. It is a settled proposition of law that a person, who is in possession of the land, though an encroacher, cannot be dispossessed except by due process of law (**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]**).

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the respondents are hereby directed not to demolish Sri Anjaneya Swamyvari Temple, and Coffee Hotel-cum-Net Center bearing Door No.3-143 in 2nd Ward of Peddapadu Village, West Godavari District without following due process of law.

8. With the above direction, the Writ Petition is disposed of.
No costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this

Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 11.08.2016

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[\[1\]](#) 1992 Supp (2) SCC 29

[\[2\]](#) 2011 (2) ALT 8 (SC)

[\[3\]](#) AIR 2012 SC 1727