

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

WRIT PETITION No. 38755 of 2012

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“...to issue a Writ, or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in contemplating demolition of petitioners' house property in Sy.No.37/1 in an extent of 123 Sq. yards situated at Hydershah Kote Village, Rajendra Nagar Mandal, Ranga Reddy District without following due process of law and without issuing any notice is arbitrary, illegal and unconstitutional and against the principles of natural justice and consequently by declaring the impugned notice of the 2nd respondent dated 7.12.2012 as illegal and unsustainable, direct the respondents not to take any further action including demolition of the petitioners property in the above mentioned land and pass such other or further orders as this Honourable court may deem fit and proper in the circumstances of the case.”

Heard Sri Suresh Kumar Reddy Kalava, learned counsel for the petitioners; learned Government Pleader for Panchayat Raj and Rural Development for the first respondent and Sri G. Narender Reddy, learned Standing Counsel for the second respondent – Gram Panchayat.

According to the petitioners, their grand father, Sri Babaiah, was the absolute owner and pattadar of the agricultural land admeasuring Ac.0.22 guntas in Sy.No.37/1 of Hydershakote Village, Rajendra Nagar Mandal, Ranga Reddy District, and he died in the year 1963, leaving behind his son Ashok, the father of the petitioners herein, as his sole legal heir. It is further stated that the petitioners'

father succeeded to the said property and gifted the said property to the petitioners by executing a registered gift deed bearing Doc.No.3780/2010 dated 04.10.2010. Accordingly, the petitioners got Ac.0.11 cents of land each and they are in possession and enjoyment of the same. It is further pleaded that they have applied for permission to construct a building in an extent of 123 square yards and the Gram Panchayat granted permission on 25.04.2011 and that as per the approved layout, they constructed a house thereon.

The grievance of the petitioners is that the Panchayat Secretary of the second respondent – Gram Panchayat issued a notice dated 07.12.2012, directing the petitioners herein to remove the said building within a period of seven days from the date of receipt of the notice based on the documents filed by one Mr.Jithendra Chowdary, showing that there is an existing 20 feet road on the western side of the said building.

Reiterating the averments in the writ affidavit, it is submitted by the learned counsel for the petitioners that before resorting to the impugned action, the second respondent – Gram Panchayat did not issue any show cause notice and had such course of action been adopted by the second respondent-Gram Panchayat, the petitioners would have placed the entire documents before it and the impugned notice would not have emanated. It is further submitted that the second respondent – Gram Panchayat resorted to the impugned action at the instance of third parties. It is also submitted that the impugned action is violative of Articles 14, 21 and 300-A of the Constitution of India.

A counter affidavit deposed by the Panchayat Secretary of the second respondent – Gram Panchayat is filed.

Reiterating the contents of the said counter affidavit, it is submitted by the learned Standing Counsel for the second respondent that the second respondent – Gram Panchayat before issuing the impugned notice issued a notice on 07.09.2011. He further submitted that when the said notice was attempted to be served by the Attender of the Grampanchayat, the petitioners herein did not receive the same.

Right to property is a Constitutional Right. Article 300-A of the Constitution of India mandates, in clear and unequivocal terms, that no citizen of this country shall be deprived of his/her property except in accordance with the procedure established by law.

It is also settled preposition of law that the action on the part of the authorities, which has civil consequences, must necessarily be preceded by notice and opportunity of being heard to the persons likely to be affected by such action.

In the instant case, in the counter-affidavit, except stating that the notice dated 07.09.2011 was attempted to be served through the Attender of the Gram Panchayat and the petitioners did not receive the same, no evidence is placed on record to substantiate the said plea.

In the absence of any evidence, it is to be construed that the second respondent – Gram Panchayat did not issue any notice prior to issuance of the impugned notice of demolition. In the considered opinion of this Court, the said action on the part of the respondent – Gram Panchayat is violative of Articles 14 and 300-A of the

Constitution of India besides being opposed to the principles of natural justice.

For the aforesaid reasons, the writ petition is allowed, setting aside the notice issued by the second respondent dated 07.12.2012. However, this order will not preclude the respondents from proceeding in accordance with law after giving notice and opportunity of being heard to the petitioners herein.

As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 24.11.2016
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A.V.SESHA SAI, J

