

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.24214 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the inaction of the respondent authorities in following the due process of law (The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) and trying to acquire the petitioner's private property.

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

3. Learned counsel for the petitioner submitted that the petitioner is the owner of an extent of Ac.6.14 cents in Survey No.487 of Kuraganipalli village, Chamaluru Panchayat, Narpala Mandal, Anantapur District. The petitioner got the property under a registered gift deed dated 23.10.2006. The case of the petitioner is that the respondents 2 and 3 are interfering with his peaceful possession and enjoyment of the property.

4. Learned Assistant Government Pleader submitted that the petitioner herein encroached an extent of Ac.0.87 cents, which belongs to the irrigation department.

5. Whether the petitioner has encroached an extent of Ac.0.87 cents of the irrigation land or not 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 petitioner encroached an extent of 0.87 cents of land, which belongs to irrigation department, the respondents are not entitled to take possession of the said Ac.0.87 cents without following the due procedure. It is a settled position 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]).

6. 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 dispossess the petitioner from the land in question without following the due procedure.

7. Accordingly, this 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

July 29, 2016.
Rns

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Date:29.07.2016

Rns

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

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

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

