THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.4425 of 2016

11.02.2016

Between:

Nalli Udaya Manohar and another

.. Petitioners

and

The State of Andhra Pradesh,
represented by its Principal Secretary,
Panchayat Raj and Rural Development Department,
Hyderabad and others

.. Respondents

Counsel for the petitioners: Mr.T.S.N.Sudhakar

Counsel for respondent No.1: Assistant Government Pleader for
Panchayat Raj and Rural Development (AP)

Counsel for respondent Nos.3 and 4: Assistant Government Pleader
for Revenue (AP)

Counsel for respondent No.5: Assistant Government Pleader for Home (AP)

Counsel for respondent Nos.2 and 6: --

The Court made the following:

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ORDER:

The petitioners, who have a dispute with respondent No.6, in that the latter has allegedly encroached upon their land and raised a shop illegally, have availed the public law remedy under Article 226 of the Constitution of India, in the garb of enforcing statutory duty of respondent No.2 for removal of the unauthorized construction.

In my opinion, when the petitioners are entitled to avail the common law remedy of a civil suit for claiming the relief such as mandatory injunction for removal of the unauthorized construction allegedly made by respondent No.6 over their land, invoking the jurisdiction of this Court under Article 226 of the Constitution of India is wholly misconceived. While it is incumbent upon respondent No.2 to remove the unauthorized constructions, this Court has no reason to issue a direction in the present case at the instance of the petitioners, who are not seeking to espouse a public cause. The jurisdiction under Article 226 of the Constitution of India, being discretionary in nature, when the petitioners have approached this Court without availing a more appropriate remedy, *viz*., civil suit against respondent No.6, this Court is not inclined to exercise such jurisdiction in their favour on the facts of the present case. In this view of the matter, without expressing any opinion on the nature of the construction raised by respondent No.6, the Writ Petition is dismissed, with liberty to the petitioners to avail the remedy of a civil suit.

As a sequel to dismissal of the writ petition, W.P.M.P.No.5662 of 2016 filed by the petitioners for interim relief shall stand dismissed as infructuous.

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C.V.NAGARJUNA REDDY, J

11th February, 2016
GHN