

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.27580 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 respondent Nos.2 and 3 in trying to demolish the houses of the petitioners, as arbitrary and illegal.

2. Heard the learned counsel for the petitioners, the learned Government Pleader for Panchayat Raj and Rural Development, and Sri Ravi Cheemalapati, the learned Standing Counsel for Gram Panchayat (Andhra Pradesh).

3. The case of the petitioners is that their grand father encroached an extent of 50 square yards and 333 square yards in R.S.Nos.792 and 796 of Venkatapuram Gram Panchayat, Eluru Rural Mandal, West Godavari District and constructed asbestos roof buildings. It is the further case of the petitioners that the Gram Panchayat allotted Door No.6-182/1A with Assessment No.2136 to the first petitioner and Door No.6-182/1 with Assessment No.2111 to the second petitioner. A perusal of the record reveals that the Gram Panchayat also sanctioned permission to the second petitioner for construction of the house. A perusal of the record further reveals that the petitioners have obtained electricity service connection to their houses.

4. The contention of the learned counsel for the petitioners is that respondent Nos.2 and 3 are making hectic attempts to demolish the houses of the petitioners without following procedure.

5. The learned Standing Counsel for the third respondent submitted that the petitioners have occupied the panchayat vacant site without any authority whatsoever.

6. It is the case of the petitioners that they have been in possession

and enjoyment of the property in dispute for more than 40 years.

7. Whether the petitioners are the encroachers of the Gram Panchayat property or not is purely a disputed question of fact, which cannot be gone into while exercising the jurisdiction under Article 226 of the Constitution. Even assuming that the petitioners have encroached the Gram Panchayat land, the Gram Panchayat has no right whatsoever to demolish the houses of the petitioners without following the procedure as contemplated under the provisions of the Andhra Pradesh Panchayat Raj Act, 1994. 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]). The principles of natural justice require that the competent authority has to issue a notice to the affected parties before taking any action.

8. 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 the houses of the petitioners bearing Door Nos.6-182/1A and 6-182/1 of Venkatapuram Gram Panchayat, Eluru Rural Mandal, West Godavari District without following due process of law.

9. With the above direction, the Writ Petition is disposed of. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 17.08.2016

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

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

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