

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.20145 OF 2004

ORDER:

This Writ petition is filed challenging the action of the respondents 2 to 5 in demolition of the two shops bearing No.1-271 in Sy.No.161/2 situated at Kondapalli Village of Rebbana Mandal, Adilabad District, without following due process of law.

02. It is the case of the petitioner that he purchased Ac.0.41 cents of land in Sy.No.161/2 from one Kamineni Sri Krishna under registered sale deed dated 15.07.2002 bearing Document No.1205/2002. Since the date of purchase, the petitioner has been in possession and enjoyment of the property and applied for approval of plan, for construction of two shops, to Gram Panchayat and accordingly plan was approved on 05.01.2004 and raised construction. Assigned Door No.1-271, the Gram Panchayat has been collecting property tax from the petitioner.

03. One of the two shops was occupied by the Son-in-law of the petitioner by name Sunkari Srinivas, who was un-employee to eke-out his livelihood and started fertilizer business investing huge amount in the said business. While he is carrying on business in the said premises, on 01.11.2004 the 5th respondent along with the 3rd respondent came to the premises and started demolition of the structures without any prior notice, demolished part of the construction, despite, protest by the petitioner. Therefore, the high-handed action of the respondents 5 and 3 is illegal and contrary to the law and principles of natural justice. Therefore, the petitioner approached this Court seeking a direction against the respondents not to demolish the structures bearing Door No.1-271 in S.No.161/2 situated at Kondapalli Village, Rebbana Village, Adilabad District, restraining them from interfering with the peaceful possession and enjoyment.

04. It is the specific contention of the petitioner that the distance

between the shop and middle of the road is about 80 feet and not 49 feet and therefore he maintained sufficient distance, as required.

05. The respondents filed counter denying the material allegations *inter alia* contending that the petitioner has to maintain 66 feet distance from the middle of the road to the building, but actual distance is only 49 feet from the middle of the road to the building. Thus, the petitioner has encroached the Government land. Therefore, the Government is entitled to remove the encroachment and no prior notice is required to be given to take action against the encroacher and thus they supported their action in demolition of the building and prayed for dismissal of the writ petition.

06. During the course of hearing, the learned Government Pleader for the 3rd respondent has fairly conceded that he has no objection, if permission is granted, to take appropriate action by following due process of law. The learned counsel for the petitioner also accepted the same.

07. In normal course of events, even an encroacher cannot be removed from the possession without any prior notice and admittedly no notice prior to commencement of demolition was issued. But according to the respondents, personal reminders were made to the petitioner for removing the encroachments and that itself is sufficient notice. It is settled law that even an encroacher cannot be evicted except by due process of law. Requirement of notice is only to afford an opportunity to substantiate his claim legally, if any. If any demolition takes place without notice, it is difficult to establish his claim over the property and it is in violation of principles of natural justice. However, the distance between the middle of the road and the petitioner's building is in dispute and the same cannot be decided by this Court while exercising power under Article 226 of the Constitution of India.

08. In the absence of any prior notice before commencement of demolition of the shops, the action of the respondents is illegal.

Moreover in view of the contention of the learned Government Pleader for the 3rd respondent, the respondents are permitted to take appropriate action following due process of law.

09. With the above observation, the writ petition is disposed of.
No costs.

10. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.19.02.2016
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