

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.23675 OF 2016

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ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring the action of the respondents 2 and 3 in trying to demolish the compound wall constructed by the petitioner in the land to an extent of 326.66 square yards in Survey No.333/1 of Hussainapuram Village, Orvakal Mandal, Kurnool District without following the due procedure or causing notice to the petitioner as being illegal, arbitrary and in violation of principles of natural justice and consequently to direct the respondents not to interfere with the peaceful possession and enjoyment of the aforesaid land of the petitioner without following due process of law by demolition or otherwise and pass such other orders.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj and Rural Development and Sri G.Seshadri, the learned Standing Counsel for Z.P.P. – M.P.P. – G.P.P.

The contention of the petitioner is that his father constructed a house in an extent of 326.66 square yards in Survey No.333/1 of Hussainapuram Village, Orvakal Mandal, Kurnool District long back. The father of the petitioner executed a gift deed on 27.10.2015 bequeathing the house to the petitioner. The petitioner has been in possession and enjoyment of the house since 27.10.2015.

The learned Standing Counsel for respondent Nos.2 and 3 is not disputed the said fact. He further submitted that the petitioner is in possession of more than 326.66 square yards of land. He also submitted that the Gram Panchayat acquired the land for formation of the roads.

This Court is not inclined to express any opinion on disputed questions of fact. A perusal of Section 98 of the A.P. Panchayat Raj Act, 1994 at a glance mandates that the Gram Panchayat is not entitled to evict the encroachers without following 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]).

Having regard to the facts and circumstances of the case and also the principle enunciated in the decisions cited supra, the respondents are hereby directed not to dispossess the petitioner from the land in an extent of 326.66 square yards in Survey No.333/1 of Hussainapuram Village, Orvakal Mandal, Kurnool District without following due process of law.

Accordingly, the Writ Petition is disposed of. No costs.

Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 21.07.2016

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^[1] 1992 Supp (2) SCC 29

^[2] 2011 (2) ALT 8 (SC)

^[3] AIR 2012 SC 1727