

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.23633 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 respondent Nos.2 and 3 in attempting to demolish the house of petitioner and trying to evict her from the residential house with asbestos roof in the land to an extent of 200 square yards in R.S.Nos.792 and 796 of Venkatapuram Gram Panchayat, Eluru Rural Mandal, West Godavari District, as illegal, arbitrary, unlawful without jurisdiction, besides violative of principles of natural justice and offends Articles 14 and 21 of Constitution of India and consequentially to direct the respondents not to demolish the said house of the petitioner and not to evict the petitioner from her house and to pass such other orders.

Heard the learned counsel for the petitioner, the learned Government Pleader for Panchayat Raj and Rural Development and Sri Ravi Cheemalapati, the learned Standing Counsel for ZPP, MPP and GPP.

A perusal of the record reveals that the grand parents of the petitioner have occupied an extent of 200 square yards of land in R.S.Nos.792 and 796 of Venkatapuram Grama Panchayat, Eluru Rural Mandal, West Godavari District 30 years back. The petitioner has been in possession and enjoyment of the same since 2008. The Mandal Revenue Officer, Eluru issued an Occupancy Certificate on 19.02.2008. The petitioner also made an application seeking permission of the Gram Panchayat for construction of RCC building. Respondent No.3 - Gram Panchayat granted permission on 28.03.2016.

Learned counsel for the petitioner submitted that due to financial constraints, the petitioner could not construct RCC building.

A perusal of the record reveals that the petitioner has been paying the house tax to the Gram Panchayat. The material placed before this Court clinchingly establishes that the petitioner has been in possession and enjoyment of the property in question. The contention of the learned counsel for the petitioner is that the new Panchayat Secretary without verifying the panchayat records making attempts to evict the petitioner.

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]).

If the property in dispute is a Gram Panchayat property, respondent No.3 - Gram Panchayat has to follow the procedure contemplated under Section 58 of the A.P. Panchayat Raj Act in order to evict the petitioner from the property.

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 evict the petitioner from the land in an extent of 200 square yards in R.S.Nos.792 and 796 of Venkatapuram Grama Panchayat, Eluru Rural Mandal, West Godavari 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