

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.18637 OF 2010

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, for the following relief:

“to issue a writ, order of direction more particularly one in the nature of *WRIT OF MANDAMUS* declaring the action of 1st respondent in insisting the petitioner to vacate from her site property admeasuring 363.2 sq. yards covered by R.S.No.428/1 of Gannavaram Village and contemplating to demolish the petitioner's compound wall situated there around and also notice R.O.C.No.236/2009 dated 19-07-2010 issued by the 1st respondent as illegal, irregular, irrational without jurisdiction and violative of principles of natural justice, provisions of Andhra Pradesh Panchayat Raj Act, 1994 and offends Articles 14, 21 and 300-A of Constitution of India and consequently direct the respondents not to interfere in any manner with the petitioner said property.”

2. Heard Sri C.Ramachandra Raju, learned counsel for the petitioner, Sri Ravi Chimalapati, learned Standing Counsel for the first respondent – Gram Panchayat and the learned Government Pleaders for respondent Nos.2 to 4.

3. According to the petitioner, she is the absolute owner, possessor and enjoyer of the property, admeasuring 750.2 square yards with structures therein situated within the limits of Gannavaram Gram Panchayat, Krishna District, having purchased the same by way of a registered sale deed dated 23.01.2004 from Smt. Surya Devara Saraswathamma and another, who purchased the same by way of registered sale deed dated 03.01.1967 from

Sri Devineni Venkateswararao and his sons. It is further stated in the writ affidavit that earlier the petitioner herein filed Writ Petition No.19589 of 2009 before this Court for a direction to the respondents to act in accordance with law and to forebear from taking coercive action of demolition as regards the subject constructions. This Court disposed of the said writ petition, by way of an order dated 13.07.2010, with a direction to the respondents therein not to take any steps for demolition of the compound wall constructed by the petitioner, without following the procedure as contemplated under Section 98 of the A.P. Panchayat Raj Act, 1994, while keeping it open for the petitioner to file appropriate explanation and further directed the respondents to consider the same before taking further action in the matter.

4. In pursuance of the above orders passed by this Court, the first respondent – Gram Panchayat, issued a notice bearing ROC.No.236/2009, dated 19.07.2010, asking the petitioner herein to remove the subject constructions within a period of seven days and to inform the same in writing. By virtue of the said notice, the Gram Panchayat also asked the petitioner to produce the evidence, if any, with regard to the rights of the petitioner in writing. In response to the said notice dated 19.07.2010, the petitioner herein submitted an explanation on 26.07.2010 stating that she is neither an encroacher nor she is causing any obstruction for any road and she also disputed the applicability of Section 98 of the A.P.Panchayat Raj Act for the instant issue.

5. In the above back ground alleging that, without considering the explanation offered on 26.07.2010, the first respondent came

to the subject premises with machinery and asked the petitioner to vacate the site, the present writ petition came to be instituted.

6. This Court while ordering 'Rule Nisi' on 30.07.2010, in W.P.M.P.No.23583 of 2010, issued interim directions, directing the respondents not to demolish compound wall constructed around subject property and not to evict the petitioner pursuant to the notice dated 19.07.2010 issued by the first respondent. In response to the 'Rule Nisi' issued by this Court, a counter affidavit deposited by the Panchayat Secretary of the first respondent – Gram Panchayat is filed, denying the averments made in the affidavit filed in support of the writ petition and the counter further disputes the title of the petitioner herein also, but does not disclose any information as to the passing of any final order on the notice.

7. The information available before this Court manifestly discloses that this Court, while disposing of the writ petition in Writ Petition No.19589 of 2009, specifically directed the respondents herein not to take any steps for demolition of the compound wall constructed by the petitioner, without following the procedure as contemplated under Section 98 of the A.P. Panchayat Raj Act, while keeping it open for the petitioner herein to respond to the notice, by way of explanation. In the instant case, there is absolutely no dispute as regards the submission of the explanation by the writ petitioner in response to the notice dated 19.07.2010.

8. A perusal of the said explanation, in clear terms, reveals that the petitioner herein stated that she is the absolute owner of the property, having purchased the same by way of registered sale deed and that she is not the encroacher nor she is causing any

obstruction for the road as such, the Gram Panchayat has no jurisdiction to issue any notice under Section 98 of the A.P. Panchayat Raj Act. Admittedly, the petitioner herein, in response to the notice dated 19.07.2010, submitted an explanation and no orders have been passed so far by the first respondent – Gram Panchayat, on the said notice and the explanation offered. Therefore, this Court is of the considered opinion that the ends of justice would be served if the first respondent herein is directed to pass appropriate orders on the explanation dated 26.07.2010 submitted by the petitioner herein, in response to the notice dated 19.07.2010, by fixing some time and by continuing the interim orders passed by this Court till such exercise attains finality.

9. For the aforesaid reasons, the Writ Petition is disposed of, directing the first respondent herein to consider the explanation dated 26.07.2010 submitted by the petitioner herein in response to the notice dated 19.07.2010 issued by the first respondent and pass appropriate orders as per law, within a period of three (3) months from the date of receipt of a copy of this order, after giving a notice and opportunity of hearing to the petitioner herein. Till such exercise attains finality, the interim directions granted by this Court in W.P.M.P.No.23583 of 2010 on 30.07.2010 shall continue to operate.

10. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 26.12.2016
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