

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.25712 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the notice No.16^M, dated 11.7.2016 issued by the fourth respondent as illegal.

2. Heard the learned counsel for the petitioner, the learned Assistant Government Pleader for Irrigation and Command Area Development (A.P) for respondent Nos.1 and 4, learned Assistant Government Pleader for Revenue (A.P) for respondent Nos.2 and 3, and learned Assistant Government Pleader for Roads & Buildings (A.P) for respondent No.5.

3. A perusal of the record reveals that the petitioner is owner of land to an extent of Ac.0.65 cents in survey No.22/9 of Uradallapalem Village, Atilli Mandal, West Godavari District. He started ESSAR Oil petrol bunk in the land after obtaining necessary permission from the concerned department. The respondents inspected the premises and threatened him with dire consequences. The fourth respondent issued notice No.16^M, dated 11.7.2016 directing the petitioner to remove the pipes laid by the petitioner in petrol bunk premises.

4. The learned Assistant Government Pleaders, in one voice, submitted that the petitioner closed the irrigation channel to the extent of 20 mtrs thereby caused obstruction to free flow of irrigation water to the extent of Acs.30.00 of agricultural land. They further submitted that the acts of the petitioner caused much inconvenience to the farmers of the locality. They also submitted that the petitioner has not complied with condition No.3 of No Objection Certificate issued by the fifth respondent in letter No.7667/JT01/NOC/2015, dated 29.9.2015.

5. At the time of arguments, learned counsel for the petitioner submitted that the respondents conducted survey after the petitioner issued reply notice on 15.7.2016.

6. Whether the petitioner has encroached the irrigation channel and thereby caused obstruction to the free flow of irrigation water or not is purely a disputed question of fact, which cannot be gone into while exercising jurisdiction under Article 226 of the Constitution of India. The respondents are the competent persons to decide whether the petitioner has encroached the Government land or not.

7. Having regard to the facts and circumstances of the case, the respondents are hereby directed not to remove the pipes underneath the culvert at the petrol bunk of the petitioner in Uradallapalem, without following the due process of law.

8. With the above direction, the writ petition is disposed of. However, disposal of this writ petition does not preclude the respondents to take appropriate action in accordance with law. As a sequel, miscellaneous petitions pending, if any, in this writ petition shall stand closed.

T.SUNIL CHOWDARY, J

August 02, 2016.

NOTE:

Dispatch order copy by

04.8.2016.

(By order)

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