

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.4655 of 2016

ORDER:

The order dated 29.01.2016 of the 5th respondent is challenged before this Court.

As the challenge is on limited ground of there being no notice to the petitioner, no enquiry having been completed and no opportunity having been given to the petitioner, this Court on 15.02.2016 directed *status quo* to be maintained and directed the matter to be listed under the caption 'for orders'. Thereafter, the matter underwent four adjournments and the interim order of *status quo* was also extended from time to time. Learned Government Pleader filed WVMP No.912 of 2016 seeking to vacate the order of *status quo* passed by this Court and the same is listed today.

Since the issue involved in the case is simple in nature, with consent of both the parties, the writ petition itself is taken up, heard and being disposed of before admission.

Learned counsel for the petitioner relied on G.O.Ms.No.188 dated 21.07.2011 in support of her contention that the procedure prescribed in G.O., in particular, para-4 with regard to eviction has not been followed.

Counter affidavit has been filed by the learned Government Pleader along with vacate petition in which it has been stated that on 21.08.2015 the 5th respondent-Gram Panchayat passed a resolution bearing No.84 for conducting survey of the subject property and as the petitioner failed to receive the notice, the same was affixed to the house of the petitioner on 14.12.2015 and thereafter the Surveyor had conducted survey and had categorically found that the writ petitioner had encroached three links on northern side and 2 ½ links on southern side and the encroachment is through public road and is objectionable. Further, the house of the petitioner is situated in corner place and in view of the encroachment, the Gram Panchayat is unable

to construct pakka drainage and CC road.

A reply affidavit is also been filed by the learned counsel for the petitioner.

Heard Smt.Anula, learned counsel representing Sri M.Sree Rama Rao, learned counsel for the petitioner, as well as Smt.K.Nischala, learned counsel representing Sri Ravi Cheemalapati, learned Standing Counsel for R-5.

Having considered the submissions made on behalf of both the parties, one aspect of the matter is clear that the petitioner has not availed the opportunity of representing before the 5th respondent. The allegation of the 5th respondent is that petitioner refused to receive the notice and the same has been denied by the petitioner by way of reply affidavit.

In those circumstances this Court is of the view that no prejudice as such would be caused to the 5th respondent, if one more opportunity is given to the petitioner though in normal circumstances substitute service is also deemed to be service satisfying the procedural requirements.

Across the Bar, one of the submissions made by the learned Standing Counsel for Gram Panchayat is that the petitioner had made construction without obtaining permission and also beyond permissible area, which may be considered by the 5th respondent also considering the small extent of plot of the petitioner in which only a limited construction can be made. Further, the petitioner is at liberty to file objections taking into consideration the allegations and also the material placed before this Court in the counter affidavit. Inasmuch as the petitioner had all the material with her, three weeks time is granted to the petitioner for filing objections, which shall be considered by the 5th respondent represented by Panchayat Secretary after taking into consideration the material placed and after providing an opportunity of hearing the petitioner and final orders be passed. Till such time, the

respondents shall not take any coercive steps against the petitioner. Such entire exercise shall be completed within a maximum period of eight weeks from the date of receipt of a copy of this order. It is needless to mention that the respondents shall strictly adhere to the procedure prescribed.

With above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition shall also stand closed.

CHALLA KODANDA RAM, J.

15th June, 2016
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