

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

Suo Motu Contempt Case 1888 of 2016

and

Contempt Case No.1725 of 2016

In

WP. No.28233 of 2016

and

WP. No.28233 of 2016

COMMON ORDER:

The Writ Petition has been filed by the petitioner on 22.08.2016 alleging that she is in possession of the property bearing No.21 Revenue Ward No.21, Phoolbagh Road, Vizianagaram Municipality, Vizianagaram District for several years, that a house site patta was also granted to the petitioner on 09.11.2010 confirming her possession and enjoyment of the subject property more than 12 years, and that she constructed a house in the said plot which was assessed by the 2nd respondent with Assessment No.1093041872.

2. Petitioner contended that the 2nd respondent wished to widen the road from Ambati Satram to Kothapet water tank to 80 feet road, that there was imminent threat of demolition of a portion of the petitioner's structure for the purpose of road widening, that markings were made on the building and the process of road widening commenced from 18.08.2016.

3. Counsel for the petitioner contended that without issuing any notice or conducting any enquiry, the 2nd respondent cannot proceed with demolition of the structure erected by the petitioner since it is obligatory on the part of the respondents to initiate proceedings under the provisions of Land Acquisition

Act, 1894 or purchase the property and without doing so, demolition of petitioner's structure could not be affected.

4. On 22.08.2016 in W.P.MP.No.34980 of 2016 in W.P.No.28233 of 2016 this Court directed the respondents not to demolish the house of the petitioner in the subject property.

5. Petitioner however alleges that in spite of the said order passed by this Court on 23.08.2016, structure erected by the petitioner has been demolished in violation of the Court order. Therefore, this Court initiated a Suo Motu Contempt Case No.1888 of 2016.

6. Petitioner filed C.C.No.1725 of 2016 to punish the respondents for Contempt of Court for wilful disobedience of the above order.

7. Counter affidavit has been filed by the 2nd respondent in the Writ Petition contending that the demolition of structure erected by the petitioner took place on 18.08.2016 prior to the passing of the interim order. According to the 2nd respondent, property claimed by the petitioner is situated after Kothapet Water Tank covered by survey No.46 which is classified as municipal land as per the records available with the municipality. The Town Surveyor Register extract has been filed in support of this plea.

8. A reading of the said Town Surveyor Register shows number of interpolations and corrections therein and it also

records in column No.18 and 19 that certain irregular changes were made in T.S.No.46.

9. In any event, it is settled law that an entry in the Town Surveyor Register is not proof of title. (***Hyderabad Potteries Pvt. Ltd. vs. Collector, Hyderabad District & another¹***). Therefore, the plea of the 2nd respondent that the land in occupation of the petitioner is municipal land cannot *prima facie* be accepted.

10. Though the petitioner stated that he had obtained a house site patta for the land in occupation, the proceeding dt.09.11.2008 issued to her is a proceeding issued by the Tahsildar, after enquiry, certifying that the subject land was in her possession for more than 12 years. This document's veracity is not questioned by the 2nd respondent.

11. As the petitioner is admitted to be in possession of the property for more than 12 years openly and continuously, hostile to the alleged title of the 2nd respondent, *prima facie*, the petitioner would have acquired title to the subject land by adverse possession. So it is not open to the 2nd respondent to doubt the title of the petitioner without questioning the same in any Civil Court and branding the petitioner as an encroacher.

12. Though in the counter affidavit, the necessity to widen the existing road of 60 feet from Ambati Satram to Ring road Junction including a portion adjacent to the petitioner's

¹ 2001(3) ALT 200

property to 80 feet is stated to be the reason for demolishing the petitioner's structure and it is also contended by the Standing Counsel for 2nd respondent that the petitioner had agreed to the same, if she was allotted a house at JNNURM. But copy of the said consent letter or agreement letter from the petitioner has not filed along with the counter affidavit. In fact, the counsel for petitioner denied that the petitioner had given any such consent.

13. Section 42 read with Section 174 of the A.P. Municipalities Act, 1965 deals with the procedure for acquisition of immovable property under the Land Acquisition Act, 1894 and empowers the 2nd respondent to acquire any property under the provisions of the said Act and pay compensation. Therefore the stand taken in para 5 of the counter affidavit that the 2nd respondent had given marking of the affected property and had taken up demolition only after following due process of law is a false plea, since admittedly no proceedings for acquiring petitioner's property had even been initiated.

14. Counsel for the 2nd respondent placed reliance on Sections 192 and 194 to contend that encroachments could be removed by the 2nd respondent without issuing any notice.

15. As stated by me above, petitioner cannot be termed as an encroacher in the light of the certificate of possession given to the petitioner on 09.11.2008 which certifies that the petitioner has been in open and continuous possession of the property for

more than 12 years. In fact by the time alleged demolition took place, the petitioner's possession was of more than 20 years.

16. It is settled law that a summary procedure for eviction even under the A.P. Land Encroachment Act, 1905 cannot be resorted to disturbing long standing possession and the State or its' entity seeking to take possession should approach a civil Court and obtain a decree for eviction (**Govt. of Andhra Pradesh v. Krishna Rao and another²**)

17. I have already held that the petitioner cannot be termed as an encroacher in view of the possible acquisition of title by the petitioner to the subject land. In any event, the power under Sections 192 and 194 can be resorted to by the respondents without prior notice only in case of an emergency as held in **Olga Tellis vs. Bombay Municipal Corporation³**. Therefore, the demolition of the structure erected by the petitioner cannot be justified by the 2nd respondent even on the basis of Sections 192 and 194.

18. Since the demolition of the structure erected by the petitioner is without following due process of law and in gross violation and disregard to the applicable law, the Writ Petition is allowed; it is declared that the respondents action in demolishing the structure erected by the petitioner without following due process of law is arbitrary and illegal; and the 2nd respondent is directed to pay tentatively a sum of Rs.1,00,000/- (Rupees One lakh) as compensation to the petitioner within a

² AIR 1982 SC 1081

³ AIR 1986 SC 180

period of four (04) weeks from the date of receipt of a copy of this order. This will be in addition to the compensation which the petitioner may obtain in a civil suit which the petitioner may initiate against the 2nd respondent seeking compensation for such illegal demolition. The 1st respondent shall take account of the conduct of the Commissioner of the 2nd respondent-Municipality in disregarding the provisions of the A.P. Municipalities Act, 1965 in demolishing the structure erected by the petitioner and initiate appropriate disciplinary action against the said official and other officials responsible for the same.

19. Since it is difficult for this Court to decide whether the actual demolition of the petitioner's structure was took place on 23.08.2016 or on 18.08.2016, in the absence of clear evidence in this regard, I am of the opinion that the 2nd respondent cannot be held liable for contempt. Consequently, the Suo Motu Contempt Case 1888 of 2016 and Contempt Case No.1725 of 016 are closed.

20. Consequently, miscellaneous petitions pending, if any, in the Writ Petition and Contempt Cases, shall stand closed.

M.S.RAMACHANDRA RAO, J

28th October, 2016.
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