

THE HON'BLE SRI JUSTICE M. GANGA RAO
WRIT PETITION NO.26035 of 2005

ORDER:

This Writ Petition is filed praying to issue a Writ of Mandamus declaring the action of the 2nd respondent in seeking to demolish the petitioner's building bearing Door No.18 in Ward No.14 I.C.S-Road, Guduru Town, Nellore district as illegal, arbitrary, highhanded and without jurisdiction and contrary to the provisions of AP Charitable and Hindu Religious Institutions Endowments Act, 1987 and the rules made there under.

Heard both sides.

It is the case of the petitioner that he is the absolute owner of house property bearing Door No.18 in Ward No.14 I.C.S Road, Guduru town having purchased the same through Registered sale deed bearing Document No.204/04 dated 28.1.2004 and constructed two storied building after duly obtaining construction permission vide proceedings BA.No.205/2005 dated 16.2.2005 and residing along with his family in the said house.

It is the further case of the petitioner that Sri Kodanda Ramanjaneya Swamy temple is situated on the east of his house. There is a compound wall constructed by his vendor abutting the compound wall of the temple. He constructed

the house leaving 30 ft width towards his eastern side compound wall. The 2nd respondent, on 2.12.2005, highhandedly demolished a portion of his eastern compound wall to a width of about 2.5 ft by engaging labourers. The height of the eastern compound wall of the petitioner's house was removed upto the level of the compound wall of the temple. The 2nd respondent had also threatened the petitioner that he would demolish the entire eastern compound wall and a portion of the building stating that the temple has claim over that land. Before undertaking demolition, the 2nd respondent had not issued any notice to the petitioner. He undertook the demolition work in the evening of 2.12.2005 preventing the petitioner from approaching a Court of Law. The 2nd respondent has no jurisdiction or authority to cause demolition of the neighbour's house or to take possession highhandedly.

Learned counsel for the petitioner contended that if at all any temple has any claim over any immovable property, the Deputy Commissioner, Endowments, is competent to adjudicate the matter on the report submitted by the Assistant Commissioner of Endowments. The Deputy Commissioner has to discharge the functions as a quasi judicial authority and is bound to provide reasonable opportunity to the affected parties and after holding enquiry, he has to pass orders as to whether

the property belonging to the temple has been encroached upon or not, and appeal lies to the District Court against the orders passed by the Deputy Commissioner under section 84 of AP Charitable and Hindu Religious Institutions Endowments Act, 1987.

In these circumstances, having perused the records and in the absence of any counter affidavit on behalf of the 2nd respondent, the contents of the affidavit and the contentions of the counsel for the petitioner have to be accepted as true and correct.

Having found that the 2nd respondent, illegally, without giving any notice, contrary to the provisions of AP Charitable and Hindu Religious Institutions and Endowments Act, 1987, undertook demolition work, the respondents are directed not to take any steps to demolish the compound wall and building of the petitioner bearing Door No.18 in Ward No.14, I.C.S Road, Guduru town, Nellore district, without following due process of law.

Accordingly, Writ Petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M. GANGA RAO,J

Date: 27.12.2017
KPM