

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.18969 OF 2017

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“to issue Writ, Order, Direction more particularly one in the nature of writ of Mandamus declaring the action of the 3rd respondent in issuing Encroachment Notice-2 dated 29-05-2017 for demolition/removal of the structures/sheds of the petitioners, which are their only source of livelihood, as illegal, arbitrary, violative of Articles 19 and 21 of the Constitution of India violative of principles of natural justice and consequently direct the respondents not to evict the petitioners from their respective sheds/shops by demolishing the structures/sheds.”

2. It is stated in the affidavit filed in support of the writ petition that petitioner Nos.1 to 3 are doing two wheeler mechanic works, puncture repairs and generator repair works respectively without obstructing anybody, particularly, the flow of traffic on the main road and the said shops are besides the road pertaining to Roads and Buildings Department i.e., Palamaner-Madanapalli Road at Palamaner on the bund of drainage channel which is not obstructing anyone and it is a 150 feet width road. All the petitioners are eking out their livelihood by doing the aforesaid works. While so, respondent No.3 issued Encroachment Notice-2, dated 27.04.2017, alleging that the petitioners have encroached the municipal land/municipal road. Without considering the explanation of the petitioners, respondent No.3 issued

Encroachment Notice-2, dated 29.05.2017, under Sections 192, 193 and 326 of the A.P. Municipalities Act, 1965 informing the petitioners to remove the constructions made in the encroachments within five days from the date of receipt of that notice or else, the said encroachments would be removed by the Municipality. Challenging the said notice, the petitioners filed the present writ petition.

3. Learned counsel for the petitioners submitted that he intends to not press the writ petition against petitioner No.3. Recording the said submission, the Writ Petition is dismissed as not pressed against petitioner No.3.

4. Insofar as petitioner Nos.1 and 2 are concerned, their grievance is that they were served with a notice, dated 29.05.2017, by respondent No.3 to remove the encroachments even though they have given their explanation to the notice, dated 27.04.2017, issued by respondent No.3.

5. Learned Standing Counsel appearing for the respondent Municipality submitted that when the petitioners were given notice on 27.04.2017, they failed to give their explanation and hence, it necessitated respondent No.3 to pass orders after consideration of all the facts.

6. Learned counsel for the petitioners submitted that petitioner Nos.1 and 2 may be given an opportunity to give their explanation to the notice, dated 27.04.2017, issued by the respondent No.3.

7. Considering all the facts and circumstances of the case, petitioner Nos.1 and 2 are directed to give their explanation to the

notice, dated 27.04.2017, of respondent No.3 within fifteen (15) days i.e., on or before 28.06.2017 and on such explanation being given, respondent No.3 shall pass appropriate orders in accordance with law on or before 30.07.2017. Till passing of such orders, respondent No.3 is directed not to take any coercive steps against the subject property.

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

9. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

Date : 13.06.2017
AMD

JUSTICE RAJA ELANGO



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AMD