

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27628 of 2011

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the notice dated 07.09.2011 issued by the third respondent to demolish the house constructed by the petitioner in an extent of Ac.0.02 cents in R.S.No.295 of Manchili Village, Attili Mandal, West Godavari District and letter dated 15.09.2011, as illegal, arbitrary and contrary to the provisions of Panchayat Raj Act; and consequently direct the respondents not to demolish the petitioner's house constructed in the land referred to above.

2) The averments in the affidavit filed in support of the writ petition would show that the father-in-law of the petitioner namely Sabbu Musalaiah, who is a landless poor person, occupied small piece of government land admeasuring Ac.0.02 cents in R.S.No.295 situated in Manchili Village, Attili Mandal, West Godavari District and raised a thatched hut in the said land about forty years back and started residing in it. The third respondent also allotted a house number bearing H.No.1-73 and tax was regularly paid for the said house since 1960. Till his death, the father-in-law of the petitioner has been in possession and enjoyment of the above property and after his death his son Sabbu Danayan, who is the husband of the petitioner, was living in the said hut with the petitioner and children. Recognising the

possession of the petitioner, the Tahsildar, Attili issued Enjoyment Certificate on 19.04.2011 certifying that the petitioner is residing in the above thatched hut. But, due to heavy rains in the year 2010-2011, the thatched hut got completely damaged and as such the petitioner removed the hut and submitted an application in the 1st week of June, 2011 seeking permission for construction of a house in the said land. After expiry of statutory period, the petitioner started construction of a house and also completed the same. The neighbouring land owner filed O.S.No.260 of 2011 against the petitioner for grant of permanent injunction. Along with the suit she also filed I.A.No.1025/2011 seeking ad-interim temporary injunction. The said I.A. was allowed. Aggrieved by the same the petitioner filed C.M.A.No.8 of 2011 on the file of the Senior Civil Judge, Tanuku and also filed an application seeking suspension of the injunction order. Pending the said appeal, the third respondent issued the impugned notice to remove the constructions made by the petitioner. Challenging the same the present writ petition came to be filed.

3) A counter came to be filed by the third respondent disputing the averments made in the affidavit filed in support of the writ petition. It is said that the petitioner encroached upon the land belongs to the R & B Department admeasuring Ac.0.02 cents and raised a hut. Subsequently, she obtained the occupancy certificate from the Tahsildar, Attili Mandal. Without obtaining any permission from the third respondent, the petitioner started construction of RCC roof building for which this respondent has

issued a notice on 23.06.2011 to stop the illegal construction. In spite of the said notice there was no response from the petitioner. Thereafter, the petitioner submitted an application along with a plan seeking permission for construction of RCC building, which was rejected and the same was informed to the petitioner on 27.06.2011. Though permission as sought for by the petitioner was rejected by the Gram Panchayat, the petitioner continued with the construction of the building. Meanwhile, adjacent land owner filed a suit against the petitioner seeking permanent injunction. In the said suit, the Junior Civil judge, Tanuku granted ad-interim temporary injunction. Aggrieved by the said order, the petitioner filed C.M.A. which is pending.

4) Learned counsel for the petitioner submits that O.S.No.260 of 2011 which was made the basis for issuance of impugned notice was dismissed on 23.04.2015 and as such no action is warranted on the notice.

5) Government Pleader for Revenue submits that the petitioner can agitate the same before the authorities concerned, who issued the notice.

6) Having regard to the above, the respondent-authorities are directed not to take any action without following due process of law. The petitioner shall submit an explanation to the notice dated 07.09.2011, within a period of four (04) weeks, in which event the authorities shall pass orders in accordance with law,

after hearing the petitioner and aggrieved persons, if any. Till such time, *status quo* as on today shall be maintained.

7) With the above direction, the writ petition is disposed of. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

27.02.2017
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