

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.16861 of 2017

ORDER:

This Writ Petition is filed to declare Endorsement in ROC No.436/ 2017/ G1, dated 25.04.2017, issued by the 2nd respondent under the provisions of the A.P. Municipalities Act (for short 'the Act'), for removal of the alleged encroachments of petitioner's premises bearing No.18/ 88-9/ 4, Guntakal Town, Anantapur District, without conducting proper enquiry as contemplated under Section 192 of the Act, as illegal and arbitrary.

Heard and perused the material available on record.

Earlier on 23.12.2016 the 2nd respondent issued a notice for removal of encroachment to the petitioner and the same was challenged in WP No.13102 of 2017 before this Court and this Court set aside the said notice by order, dated 13.04.2017. Thereafter, necessary enquiry was conducted by the Engineer concerned and found that the petitioner has encroached an extent of 22 x 12 feet of government site and issued the impugned Endorsement requesting the petitioner to remove the encroachment within a period of three days from the date of receipt of the said Endorsement.

The main contention of the petitioner is that she has obtained possession certificate from the office of Tahsildar, Guntakal, dated 01.08.2008, certifying that she is in possession land of an extent of 20 x 25 ft., in Survey No.455 of Guntakal village and constructed a house under Indiramma Awas scheme and also constructed a toilet under Swatch Bharat scheme, but these documents were not considered by the

Guntakal Municipality and issued Endorsement on 25.05.2017 for removal of encroachment.

Certification of possession by the Tahsildar, Guntakal is only useful to establish that the petitioner is in possession of the property, but it will not create any right or title over the property, unless the petitioner establishes that she is the owner of the property either by acquiring title by any means, or by any other testamentary dispossession or by long continuous possession, the petitioner is deemed to be an encroacher and moreover the petitioner herself admitted that an appeal is filed against the endorsement before the Municipal Council under Section 345 of the Act and the same is pending. Now the apprehension of the petitioner is that there is every possibility of removal of encroachments causing substantial damage to her.

The petitioner being an encroacher *prima facie* is not entitled to the equitable relief and this Court cannot grant such relief exercising power of judicial review under Article 226 of the Constitution of India. However, in these circumstances, it is a fit case to direct the Municipal Council to dispose of the appeal filed by this petitioner pending before it.

Accordingly, the Municipal Counsel, Guntakal Municipality, Guntakal – 3rd respondent is directed to decide the appeal filed by the petitioner, which is pending before it, as expeditiously as possible and in any event not later than one month from the date of receipt of a copy of this order, giving liberty to the petitioner to file an application for stay of all further proceedings before the Municipal Council in the appeal pending before it.

Giving liberty as stated above, the writ petition is disposed of. No order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

May 11, 2017.

Note:

Furnish CC in three days.

B/o.KTL

