

HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.3292 of 2006

ORDER:

The relief sought in the writ petition is as follows:

“... this Hon'ble Court may be pleased to pass an order or direction more particularly in the nature of writ of mandamus declaring the action of the respondent is illegal and highhanded which amounts to taking law into his hands and consequently direct the respondent to handover the possession of the building belonging to Bharat Scouts and Guides behind Collectorate, Nizamabad to the petitioner.”

The case of the petitioner is that Bharat Scouts and Guides is a national level voluntary service organization registered under the Societies Registration Act vide registration No.462 of 1950 dated 06.11.1959 being administered by the Bharat Scouts and Guides National Head Quarters having President of India as its President. To run the day to day administration of the National Association, the National Commissioner will be elected by its Members. The land and building in which the Bharat Scouts and Guides, Nizamabad District Association, is existing, is situated adjacent to the Collector's Office at Nizamabad. During the year 1971, Sri Guru Sankara Swamy, I.A.S., the then Collector of Nizamabad District was pleased to allot/give the said land for construction of the building for the purpose of Bharat Scouts and Guides, Nizamabad District. In fact, the foundation stone was also laid by him. As per the instructions, the Rice Millers Association, Nizamabad District,

has constructed the building duly meeting the entire expenditure incurred for the said construction. After completion, the building was inaugurated by Sri M.Bhagawan Das, I.A.S., the then Member, Board of Revenue on 28.08.1971 and since then the said land and building are in the occupation of the District Association, Nizamabad and the said association is paying the electricity bills and the municipal taxes.

While matter stood thus, on 16.02.2006, at about 3.00 p.m. the officials of the Collectorate, Nizamabad, entered into the premises of the petitioner's association highhandedly by breaking open the locks of the building and started white washing of the building as per the instructions of the District Collector. However, at the intervention of the local committee of the Bharat Scouts and Guides, the staff of the Collectorate stopped white washing and left the building. In fact, the building was partially white washed at that stage. Since there is threat of dispossession, the present writ petition is filed.

Though the writ petition is filed in the year 2006, the record discloses that no counter affidavit has been filed by the respondent till date.

A perusal of the contents of the affidavit and the material placed on record would indicate that the foundation stone for Bharat Scouts and Guides District Head Quarters building was laid by the then Collector on 15.02.1971 and the same was inaugurated by the Member of Board of Revenue on

28.08.1971. It is relevant that the Bharat Scouts and Guides Building was constructed and donated by the Nizamabad District Rice Millers Association. The news published in Eenadu Daily Newspaper on 17.02.2006 also gives information relating to encroachment of the petitioner's association, which is in possession of the said building for the last 35 years and the Government officials have identified the subject building for locating integrated land information system.

As no counter affidavit has been filed, the averments made in the affidavit filed in support of the writ petition are presumed to be unrebutted. In fact, there is no representation on behalf of the respondent. In these circumstances, this Court, basing on the material available on record, presumes that a *prima facie* case is made out in favour of the petitioner's association. Further, this Court, on 21.02.2006, was pleased to grant interim direction as sought for and in this regard also there is no vacate stay petition forthcoming from the respondent.

In the light of the above said facts, this Court is of the opinion that the petitioner cannot be dispossessed without following the due process of law, more particularly, when the subject building is owned by it. Be that as it may, even if it is presumed that the petitioner is an encroacher, it cannot be dispossessed without following the due process of law. As such, the highhanded action of the officials of the respondent

in breaking open the locks of the petitioner's building and attempting to encroach is arbitrary and highhanded one.

In these circumstances, the writ petition is allowed, directing the respondent not to dispossess and interfere with the possession of the Bharat Scouts and Guides District Head Quarters building adjacent to Collectorate, Nizamabad, without following the due process of law. However, it is open to the respondent to take appropriate action, after issuing notice and opportunity of hearing to the petitioner, as per law. No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.



P. KESHA RAO, J

Date: 25.01.2018.
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