

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.16277 of 2005

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by a group of petitioners against Secunderabad Cantonment Board-1st respondent and the District Collector, Hyderabad District-2nd respondent, requesting to issue a Writ of Mandamus or other appropriate writ or order or direction declaring the action of the respondents in fencing the writ petition subject property and seeking to demolish the structures over the property otherwise than under due process of law as illegal and arbitrary.

2. I have heard the submissions of the *Sri K.Raghuveer Reddy*, learned counsel for the petitioners, and also of *Sri Deepak Bhattacharjee*, learned Standing counsel for Cantonment Board, appearing for 1st respondent. It is pertinent to note that the third respondent-Airport Authority of India is also impleaded subsequently and the third respondent filed a counter. Therefore, I have heard the submissions of *Sri Vikram Pooserla*, learned Standing Counsel for the Airport Authority of India also.

3. Learned counsel for the petitioners fairly submits that the subject property belongs to the respondents, but the petitioners herein are in occupation of the subject property for over several decades and that they are slum dwellers; and, that when they are admittedly in settled possession of the property, the respondents are not entitled to take law into their hands and fence the property and demolish their structures without following the procedure

established by law for recovery of possession of the property in the occupation of the petitioners.

4. It is an undisputed fact that the property is a cantonment land and is a defence property.

5. This Court having regard to the facts and having heard the submissions of the learned counsel on record for the parties passed the following order on 13.12.2016:

“Learned counsel for the petitioners submits that what all he seeks in the writ petition is due process to be followed in evicting the petitioners.

In that view of the matter, the interim order granted on earlier occasion is modified giving liberty to the respondent-authorities to take appropriate steps to evict the petitioners by giving notice and reasonable opportunity to vacate the premises, which they are occupying without there being any right.”

6. Now the learned counsel for the petitioners as well as learned Standing Counsel for the Cantonment Board would submit that the writ petition may be disposed of making the said interim order as the final order in the writ petition. However, learned counsel for the third respondent brings to the notice of the Court the observations of the Supreme Court at paragraph 32 in **Sunil Kumar Kori v. Gopal Das Kabra**.¹, which are as follows:

“32. Before parting with the case it is our duty to deal with the very disturbing fact of encroachments on defence land. During the course of hearing, it was brought to our notice that there were several encroachments and a large number of illegally constructed houses in the Cantonment area. We were also informed that there is a public interest litigation pending in the High Court of Madhya Pradesh and Jabalpur and pursuant to the interim directions in

¹ (2016) 10 SCC 467

the said writ petitions a substantial number of illegally constructed houses were demolished. The Cantonments Act, 2006 re-enacted the existing Act of 1924 after taking into consideration the recommendations made by the Standing Committee of Parliament on Defence. One of the recommendations made by the Standing Committee of Parliament is to tackle encroachments on defence lands situated all over the country. In para 18 above, we have referred to Sections 247 and 248 of the Act which provide for demolition of illegally erected buildings and penalties for making illegal construction. Section 34(1)(e) of the Act also provides for removal of a member of the Board who aids or abets encroachment and the illegal constructions on the defence land. We are of the considered view that avowed legislative policy and the provisions of the Act relating to encroachments should be strictly implemented. Prompt action has to be taken by the authorities concerned for removal of the illegally constructed buildings in the Cantonment area. The Cantonment Boards should be vigilant and ensure that no further encroachments are made on defence land.”

7. In the above decision, the Supreme Court having adverted to several instances of encroachments and a large number of illegally constructed houses in cantonment areas made reference to certain provisions of the Cantonment Act, 2006, and observed that the legislative policy and the provisions of the Act relating to encroachments should be strictly implemented and prompt action has to be taken by the authorities concerned for removal of illegally constructed buildings in the cantonment area and that the Cantonment Board should be vigilant and ensure that no further encroachments are made on the defence land.

8. Having regard to the facts, submissions and the legal position, this Court is of the considered view that the writ petition can be disposed of with appropriate directions.

9. Accordingly, the Writ Petition is disposed of giving liberty to the respondent-authorities to take appropriate steps forthwith to evict the petitioners from the subject property, which they are occupying without having any right, and recover vacant possession of the same by following the procedure established by law. The needful exercise shall be commenced as per law as early as possible and preferably within 15 days from the date of receipt of a copy of this order. Needless to state that the respondents shall be vigilant and ensure that no further encroachments are made on defence lands.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

March 16, 2017
LMV