

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CC.No.1459 of 2015

and

WV.MP.No.2167 of 2016

in

WP.MP.No.19271 of 2015 in W.P.No.14820 of 2015

COMMON ORDER:

Parties will be referred to as per their array in the Writ Petition.

2. Petitioner has filed the Writ Petition stating that he is the owner and possessor of house property bearing municipal Nos.2-4-78 and 2-4-79 situated at Bharath Nagar, Peddapally, Karimnagar District, which was gifted to him by his relative under a Gift Deed executed in the year 2006, and that for the purpose of road widening, without any prior intimation, the Officials of the 2nd respondent-Nagara Panchayat demolished petitioner's house property without following due process of law.

3. On 21.05.2015 in W.P.MP.No.19271 of 2015 in the Writ Petition, this Court granted stay of all further action including demolition of the petitioner's house property referred to above.

4. C.C.No.1459 of 2015 is filed by the petitioner alleging further demolition of the structures erected by the petitioner by the officials of respondent subsequent to the order passed by this Court. Photographs are also enclosed to the affidavit filed in the Contempt Case.

5. Counter affidavit/WVMP.No.2167 of 2016 is filed by the 2nd

respondent to vacate the order dt.21.05.2015. The 2nd respondent, who is the Commissioner of Nagara Panchayath contended that there was a necessity to have a 50 feet wide road leading from Peddapalli to Dharmaram villages, and alleged that the petitioner encroached the road and constructed a tin shed and compound wall on the road. It is stated that Nagara Panchayat conducted a meeting of affected persons including the petitioner on 04.02.2015 and explained the need to clear the road to the petitioner and others, and the petitioner is alleged to have agreed to set up the 50 feet wide road. It is denied that employees of Nagara Panchayat came to his house property and demolished it. It is stated that the alleged road widening was made on 20.02.2015 and the municipality is not going to demolish further, any constructions belonging to the petitioner.

6. There is no dispute that the Nagara Panchayat has got power to remove encroachment under Section 192 of A.P. Municipalities Act, 1965. But without determining, after issuing prior notice to the petitioner that the petitioner is an encroacher, and the extent of alleged encroachment, straightaway demolition of structures erected by the petitioner could not have been undertaken by the 2nd respondent to create a 50' wide road. Though it is alleged that clearing of the encroachment was made on 20.02.2015 in the counter affidavit and it is also stated that on 04.02.2015 a meeting was conducted wherein the petitioner agreed to remove the alleged encroachment, no consent in writing of the petitioner appears to have been obtained before

affecting the demolition of the structures erected by the petitioner. The plea taken by the 2nd respondent-Nagara Panchayath that petitioner agreed for the demolition is not borne out by any record. Hence, the said plea is rejected.

7. In view of the above, the interim order granted by this Court on 21.05.2015 in WP.MP.No.19271 of 2015 in W.P.No.14820 of 2015 is made absolute and the WV.MP.No.2167 of 2016 is dismissed.

8. The photographs filed by the petitioner in the Contempt Case show the demolition effected by the Nagara Panchayath of the premises of the petitioner.

9. Petitioner had also filed a panchanama signed by some of his neighbours on 29.07.2015 at 1.35 p.m., at the time of demolition of the house property by Peddapally Nagara Panchayath. He alleged that even though he showed copy of the order dt.21.05.2015 granted by this Court, the Officials of the Nagara Panchayat demolished boundary wall admeasuring 105.5 feet, AC shed room of 275.55 sq.feet and damaged wall doors and windows with electrical wiring, boards and meters, demolished an RCC slab room with bathroom and latrine apart from a godown with AC sheet built with MS pipes and broke and bent all the pipes therein. This is also mentioned in the above panchanama.

10. In view of the above material, I reject the plea of the

respondent in the Contempt Case that he has not violated the orders of this Court.

11. Therefore, it is clear that the 2nd respondent has acted as a law unto himself and brazenly carried out the demolition of petitioner's structures in gross violation of law and order passed by this Court.

12. Consequently, Contempt Case No.1459 of 2015 is allowed and the respondent in the Contempt Case is directed to re-erect the structures mentioned in the panchanama filed by the petitioner in the Contempt Case within a period of two (02) weeks at his personal expenses from the date of receipt of copy of this order. The respondent in the Contempt Case is also sentenced to imprisonment of one month and fine of Rs.1,500/-, which shall be paid within four (04) weeks from today. The petitioner shall deposit subsistence allowance @ 300/- per day within four (04) weeks from today. The sentence of imprisonment shall stand suspended for a period of six (06) weeks.

13. The 1st respondent in the Writ Petition shall take notice of the gross violation of law committed by the 2nd respondent in the Writ Petition and initiate appropriate disciplinary action against the 2nd respondent in the Writ Petition/respondent in the Contempt Case in accordance with the applicable Service Rules.

M.S.RAMACHANDRA RAO, J

18th August, 2017.
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