

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.27393 OF 2017

Date: 24.08.2017

Between:

Bogyam Malakondaiah, S/o Kotaiah, Aged 60 years,
Occu: Agriculture, R/o Bogyamvaripalli, h/o.Vempadu,
Varikuntapadu Mandal, Sri Potti Sriramulu Nellore district
and another

.....Petitioners

and

The State of A.P., rep.by its Principal Secretary (Revenue
Department), Secretariat Buildings, Amaravathi,
Guntur District and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioners claim that they are in possession and enjoyment of the land, as per the papers enclosed to the writ petition, approximately four cents. House was constructed and petitioners are living in the said house for a long time. While so, respondents are forcibly threatening to evict the petitioners from the said property and in the process, Tahsildar in his letter dated 10.08.2017, requested the Station House Officer, Varikuntapadu, to give police protection to undertake demolition of property belonging to the petitioners to lay a road in the village. Alleging there was no proper procedure followed before taking steps for evicting the petitioners and to demolish the property, this writ petition is filed.

2. Heard learned counsel for petitioners, learned Assistant Government Pleader for Revenue (AP) for respondents 1 to 3, learned Government Pleader for Home for respondent No.4 and learned standing counsel for respondent No.5. All the counsel agreed for disposal of the writ petition at the admission stage.

3. Learned counsel for petitioners contends that entire action of the respondents in seeking police protection and to demolish property of the petitioners to lay a road without following due process, amounts to arbitrary exercise of power, is illegal and the order impugned in this writ petition is liable to be set aside on that ground alone. Learned counsel submits that petitioners have been in possession and enjoyment of the said property and the

possession and enjoyment is recognized by the respondents and, therefore, without following due process they cannot be thrown out of the property belonging to them, even assuming that there is a requirement to form a road in the village.

4. On instructions, learned standing counsel submits that in fact, according to the village records, land is classified as Gramkantam and petitioners are in unauthorized occupation of Gram Panchayat land in addition to what was assigned to them and compound wall was constructed blocking the way, causing lot of inconvenience and hardship to the villagers. He, therefore, submits that steps are being taken to remove the compound wall and to lay road and as there was lot of resistance police protection was sought to undertake the exercise. According to the standing counsel, even possession granted was only to an extent of four cents, but petitioners are in occupation of more than fifteen cents.

5. Learned Assistant Government Pleader, on instructions, submits that certificates claimed by the petitioners regarding ownership and possession are fake and, therefore, no credence can be given to them.

6. Record would disclose that Panchayat Secretary issued notice to the petitioners calling upon them to show-cause as to why illegal encroachments cannot be removed. The very fact of issuance of show-cause notice would recognize the possession of the concerned land with the petitioners. The photographs produced by the learned standing counsel would also disclose construction of compound wall surrounding the house of petitioners. According to the learned standing counsel, portion of

the compound wall is blocking the way and, therefore, this compound wall requires to be removed to create access to the neighbouring owners.

7. If what is stated by the standing counsel is true, the Grampanchayat and the revenue authorities are required to follow due procedure as warranted by law. In the case on hand, petitioners were already put on notice on the alleged unauthorized occupation and possession and petitioners have submitted their explanation. Without passing final orders on the said notice in due consideration of explanation, they could not have resorted to means of demolition of property by using force with police protection. Thus, such conduct on the part of respondents is deprecated.

8. Since notice was already issued and explanation was submitted by the petitioners, the Grampanchayat shall consider the explanation on its merits and pass appropriate orders as warranted by law by assigning due reasons in support of its decision. Until a decision is taken, as directed, no coercive action shall be taken against the petitioners.

9. Writ petition is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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