

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.32432 OF 2012

ORDER:

The case of the petitioner is that she is an Ex-Mandal Praza Parishad (MPTC) member of Madanapalli, and native of Gangannagaripally Village. The grievance of the petitioner is that there is a public road connecting with Madanapally – Nimmanapally which leads to Ramacherlapally village to Gangannagaripally under the limits of Basinikonda Gram Panchayath; that this road is existing for the past 100 years; and that this is the only road connecting to Gangannagaripalli village and Gram Panchayath is maintaining the said road and it is vested with them. While so, in the entrance of the said road the 5th respondent encroached the road portion and started making construction of mulgies. When the petitioner questioned along with villagers, the 5th respondent revealed that he purchased the patta land in the year 2010 and that after obtaining permission from Gram Panchayath, he is making construction. In fact, the 5th respondent by encroaching the public road laid foundation covering drainage canal. It is also stated that though the Gram Panchayat is having power under Sections 96, 98 and 100 of A.P.Gram Panchayat Act, 1994 to remove the obstruction on the road, inspite of repeated requests from the petitioner and also from the villagers, no action has been taken against the 5th respondent. The petitioner also sent telegrams to the District Collector, Joint Collector and Sub-

Collector on 11.05.2012 and requested them to remove the construction made by the 5th respondent, but they are not taking any action against the 5th respondent. The petitioner also submitted representation to the Gram Panchayat to take action against the 5th respondent and the Gram Panchayat issued a notice on 28.04.2012 to the 5th respondent and directed him to remove the illegal construction. The Gram Panchayat addressed a letter dated 02.05.2012 to the police requesting them to provide police protection to the staff of Gram Panchayat at the time of removing the illegal construction. However, no action has been taken by the 4th respondent till today on the ground that the 5th respondent filed suits. Though the 5th respondent filed suits in OS.No.7583/2011 and 196/2012 and obtained interim injunction in IA.No.397/2012 in OS.196/2012, the said suits does not pertain to encroachment of road portion. Aggrieved by the action of respondents 1 to 4 in not taking steps for removing the illegal construction made by the 5th respondent on the public road, present writ petition is filed.

The 4th respondent filed counter and additional counter stating that the 5th respondent has made an application for construction of building and after verifying the documents, the then Executive Officer of Gram Panchayat has granted permission vide PR.No.67/2012, dated 02.03.2012 in favour of 5th respondent and the 5th respondent constructed building beside small drainage canal and that in order to access his shop, he constructed steps above a part of drainage canal

without obstructing the said canal. In fact, there will be free flow of water under the said steps, and as on today, there is no flow of drain water in the said canal and there are no encroachments as stated by the petitioner. It is stated that on receiving complaints against the construction and encroachment of 5th respondent at the initial stage of the construction, it appears that the then Panchayat Secretary has issued notices to the 5th respondent on 28.04.2012 and also addressed a letter to the SHO, Madanapally Rural Police Station on 02.05.2012 for police protection. Thereafter, on 13.08.2012 enquiry has been conducted by the Executive Officer (PR & RD), Madanapally with reference to letter dated 05.06.2012 by the Divisional Panchayat Officer, Chittoor. As the Executive Officer submitted a report stating that there are no encroachments by the 5th respondent, there is no need to take any action against the 5th respondent and that if there is any inconvenience to the general public due to the blockage of the drainage canal, the Gram Panchayat will certainly take necessary action as required.

As per the directions of this Court the 4th respondent filed additional counter affidavit with regard to the road and structures raised by the private respondents stating that a letter dated 09.02.2017 was addressed to the Tahasildar to conduct survey in respect to the road where the 5th respondent constructed the shops. Basing on the said letter, the Tahasildar deputed the Mandal Surveyor to conduct survey in respect to

the Survey No.557/B in which the said road is formed. In the survey report it is stated that as per FMB and village map there exists a 10 feet Cart Track in front of the shops constructed by the 5th respondent; and that when they measured the width of the said road they found that there is an 18 feet existing road. It is also stated that the 5th respondent did not encroached the road and he constructed the shops beside small drainage canal as per the permission granted by the Gram Panchayat; and that in order to access his shops, he constructed steps above a part of drainage canal without obstructing the said canal. It is further stated that there will be free flow of water under the said steps.

Though notice is served on the 5th respondent, no counter is filed.

Petitioner has not filed any reply affidavit denying the averments made in the counter affidavit of the 4th respondent.

Heard learned counsel for the petitioner who submits that the 5th respondent has encroached the road margin and made construction of mulgies, but the 4th respondent has not taken any action on the petitioner having issued notice and having addressed a letter to the police seeking police protection for removal of the said illegal construction.

Learned Standing Counsel for the 4th respondent submits that the 4th respondent addressed a letter to the Tahasildar to

conduct survey and a report filed by the Tahasildar after conducting survey shows that there is no encroachment by the 5th respondent.

It is to be seen that though the petitioner made allegation against the 5th respondent that the 5th respondent is encroaching the public road, the petitioner has not given the details as to what is the width of the existing road. The survey report submitted by the Tahasildar shows that as per the village map and FMB there exists a 10 feet cart track but after measurement they found 18 feet cart track in front of the shops constructed by the petitioner. The survey report of the Tahasildar is also placed before this Court. The respondents states that the 5th respondent has not encroached the road but he constructed steps above the part of drainage canal and that the said construction will be removed in case of inconvenience to the public. The said aspect was also not denied by the petitioner by filing reply affidavit. Moreso, the 5th respondent has not filed any counter which goes to show that the 5th respondent has encroached part of drainage canal as alleged by the 4th respondent in the counter and additional counter.

Since the 4th respondent admitted that the 5th respondent encroached part of drainage canal, the 4th respondent is directed to take steps for removal of that portion, in accordance with law.

With the above direction, the writ petition is disposed of.
No order as to costs.

As a sequel thereto, miscellaneous petitions, if any,
pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

21.06.2017
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