

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.22887 of 2016

ORDER:

Heard Mr.G.L.Nageshwar Rao for petitioner, the learned Assistant Government Pleader for respondent 1 to 3, no representation for respondents 4 and 5 and Mr.Ugra Narasimha for 6th respondent.

The petitioner and the 6th respondent, it appears are entangled in a boundary dispute. The petitioner by referring to alleged influence, the 6th respondent would have exerted on respondent No.5 challenges notice in Rc.No.71/2014/P.Ve dated 13.05.2016, as illegal, arbitrary and without jurisdiction in the instant writ petition. The 5th respondent, both to stay clear from the allegations made against 6th respondent and also to demonstrate that the petitioner is not pursuing purposeful litigation has filed detailed counter.

Though some attempt was made to convert the instant writ petition for adjudication of all the disputes between the petitioner on one hand and respondents 4 to 6 on the other hand, keeping in view the legal grounds raised against the notice impugned in the writ petition, this Court does not propose to refer to all the objections of the parties.

The 5th respondent through the notice impugned in the writ petition called upon the petition as follows:

“Rc.No.71/2014.P.Ve. Mandal Prajaparishad Office
Atchampet, dt.13.05.2016.

NOTICE

Sub: Lands-Zilla Prajaparishad Lands-about
encroachment of lands in an extent of 5 Links
in Sy.No.30 Atchampet village and mandal and
asking explanation.

Ref: 1. Letter of Tahsildar, Atchampet as per his
Adangal
2. Resolution of Land Protection Committee of
Mandal Parshid dt. 09.12.2015

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As per the 1st reference, an extent of 5 links land situated in Sy.No.307 belongs to Mandal parishad is under encroachment by Pasumarthi Neelakanteswararao and he is under occupation of 5 links land and constructed rice mill godown and same was informed by the Tahsildar.

As per reference no.2 an unanimous resolution is passed by all the members of the Land Protection Committee of Mandal Parshid and suggested for removal of the encroachment.

Hence, as the government land was occupied, you are hereby called to submit explanation within 3 days. If no explanation is given in 3 days you are held responsible for the action taken by the Government.”

Mr.G.L.Nageswara Rao, assuming without admitting contends that if some portion is under the encroachment of the petitioner, the respondents 2 and 3 or Tahsildar of the Mandal can initiate action under the Land Encroachment Act, 1905. The 5th respondent is not authorized by Panchayat Raj Act, 1994 to look into the grievance of the alleged encroachments. Therefore, the notice suffers from lack of jurisdiction.

I have perused the notice and the notice does not refer to source of power for calling upon the petitioner to remove the encroachment. This Court ordered *status-quo* on 15.07.2016 Respondent No.5 did not file counter affidavit. The notice impugned in the writ petition is set aside on the ground of lack of authority under the Land Encroachment Act or Panchayat Raj Act. The order of this Court in the present writ petition shall not be understood as, this Court foreclosing remedies available in law for removing encroachment, if any, by the petitioner.

By granting such liberty, the writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Date: 11.04.2018
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