

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.7251 OF 2018

Dated: 08.03.2018

Between:

Nellore Sudhakar S/o Kistaiah,
Brahmadevam Village,
Muthukuru Mandal,
SPSR Nellore District
and three others

.... Petitioners

And

The State of Andhra Pradesh,
rep. by its Principal Secretary,
Panchayat Raj & Rural Development Department,
Amaravati, Guntur District and five others.

... Respondents

The Court made the following:



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ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Panchayat Raj (AP) for respondent Nos.1 to 4, Sri G.Seshadri, learned Standing Counsel for 5th respondent and Sri.K.L.N.Raghavendra Reddy, learned counsel appearing for 6th respondent.

2. Petitioners challenge notice dated 26-02-2018. By this notice, the Brahmadevam Gram Panchayat alleges that petitioners are in encroachment of public road and directed them to remove the encroachments. The notice refers to order dated.05-12-2017 passed by this Court in W.P.No.40019 of 2017. A reading of the order, would show that one Mr.Chenchaiah complained that even though he made several representations for removal of encroachments in Panchayat land/rasta admeasuring Ac.0.66 cents in the village, no action was taken. Having regard to this plea of the petitioner therein, this Court disposed of the writ petition directing the respondents therein to consider the representation of the petitioner within a period of three (3) months from the date of receipt of copy of order and take action in accordance with law. A reading of the order would also show that learned Standing Counsel for the Gram Panchayat represented that survey was conducted and as soon as they receive the report, action would be initiated.

3. The direction of this court was to consider the representation and to pass orders. There was no positive direction to remove encroachments. If the Gram Panchayat believed petitioners herein are in encroachment of public road, elementary principle required is

they should be put on notice by placing on record the relevant documents, by which such tentative decision is arrived, call for explanation and on considering the explanation to pass order. On the contrary, straight way order was passed directing to remove the encroachments as if a decision was already taken holding them encroaching public road. Learned counsel for respondents do not dispute that petitioner was not put on notice and was not afforded opportunity before passing impugned order.

4. Thus, this infirmity goes to the root, impugned order is not sustainable and is accordingly set aside. Writ petition is disposed of at the stage of admission. The order (termed as notice) dated 26-02-2018 shall be treated as show cause notice. The learned Standing Counsel also undertakes to instruct his client to furnish a copy of the survey report to the petitioners within three (3) days from today. The petitioners shall file their explanation within two (2) weeks from the date of furnishing survey report.

5. On considering the explanation, appropriate orders shall be passed by the Gram Panchayat. Until decision is taken and communicated to the petitioners, the 5th respondent-Gram Panchayat shall maintain *status quo* obtaining as on today.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date: 08.03.2018
TSNR