

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.25910 of 2014

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“to issue a writ order or direction more particularly, one in the nature of Writ of Mandamus, declaring the action of the respondents herein in demolishing the structure of house property bearing Door.No.75-2-36X, Harijanavada, Bhavanipuram, Vijayawada with property tax assessment No.91038(Old.No.30400/9C/1) absolutely belonging to the petitioner without issuing any prior notice and without following the due process of law as illegal, arbitrary, unjust, violative of principles of natural justice and consequently direct the respondents to pay compensation of 5,00,000/- for the demolition of the structure of house property bearing Door.No.75-2-36X, Harijanavada, Bhavanipuram, Vijayawada with property tax assessment No.91038(Old.No.30400/9C/1) made on 28.08.2014 and grant the such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.”

2. I have heard the submissions of Sri V.S.K.Rama Rao, learned counsel for the petitioner, of the learned Government Pleader for Municipal Administration and Urban Development (A.P.) appearing for the 1st respondent, and of Smt G.Jhansi, learned Standing Counsel appearing for the respondents 2 and 3. I have perused the material record.

3. The main submission of the learned counsel for the petitioner is that the petitioner is the absolute owner and possessor of the subject property having purchased it from its lawful owner; that without any notice and without following the procedure established by law, the property was demolished by the

officers of the 2nd respondent Municipal Corporation and that therefore, the present writ petition is filed.

He would further submit that this Court, on 03.09.2014, while admitting this writ petition, passed an interim order directing the respondents not to take any further coercive steps with regard to subject property pending disposal of the writ petition.

4. The respondents 2 and 3 filed the vacate petition. In the affidavit filed in support of the vacate petition, the claim of the petitioner as to ownership with regard to subject property is denied and it is *inter alia* contended as follows:

‘That the subject property is at two roads corner; that the petitioner, with an oblique motive, converted the thatched house into a pucca A.C. sheet house without any permission and without any valid document and illegally encroached into 10 feet width road to an extent of 6 feet; and, therefore, the left over road is 4 feet; the said encroachment, which is unauthorized, is causing inconvenience to the other house owners in the locality; that since the encroachment is made over a road, the Commissioner of the Municipality is entitled to remove the erections made on the road without even any notice; therefore, the action of the Municipality is valid; and, that the petitioner came to Court with unclean hands; and, hence, the writ petition is liable for dismissal.’

5. I have given earnest consideration to the facts and submissions. I have gone through the pleadings in the writ petition, in detail. Since the claim is for compensation, in the considered view of this Court, the said issue has to be resolved by

an appropriate civil forum and this is not a fit case to exercise the jurisdiction under Article 226 of the Constitution of India. In that view of the matter, this Court is of the considered view that this writ petition can be disposed of with appropriate directions.

6. In the result, the Writ Petition is disposed of reserving liberty to the petitioner to claim appropriate reliefs before an appropriate forum, if so advised and desires. It is made clear that both parties shall maintain absolute *status quo* with regard to the subject property for a period of four (4) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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

JUSTICE M. SEETHARAMA MURTI

Date: 15.06.2018
AMD



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