

HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.16318 of 2016

ORDER:

Heard the learned counsel for the petitioners as well as the learned standing counsel for the 2nd respondent Municipality.

The prayer in the writ petition is as under:

“..... to issue a Writ of Mandamus or any other appropriate Writ, order or direction declaring the action of the 2nd respondent herein in trying to demolish the shop rooms bearing Nos.18-19E1, 11-282, 4-115, 11-281, 18-9G, 12-226 and 12-129 belonging to the petitioners respectively situate in K.G. Road, Nandikotkur, Kurnool District, as arbitrary, illegal, unconstitutional and against the principles of natural justice and consequently direct the 2nd respondent herein not to demolish the shops belonging to the petitioners without following due process of law.”

The facts of the case are that the 1st petitioner is the absolute owner and possessor of shop bearing No.18-19E1. Similarly, petitioner Nos.2 to 6 are also the absolute owners and possessors of the shops bearing Nos.11-282, 4-115, 11-281, 18-9G, 12-226 and 12-129. Originally, one L.Laxmaiah Setty was the owner and possessor of the entire extent of land. Under registered partition deed dated 18.02.2005, the properties of the 1st petitioner's father were partitioned and in the said partition, the 1st petitioner was allotted the land along with structures in Sy.No.370A. After purchasing the property in the year 2011, he submitted a building plan for construction of shop rooms in the said Ac.0.03 cents to the then Nandikotkur Gram Panchayat. The competent authority sanctioned the building plan and the 1st

petitioner constructed the rooms strictly in accordance with the approved plan. Petitioner Nos.2 to 6 have also got valid title and possession over the property and they have also constructed the shops in the private patta land which they have acquired either by way of inheritance or by purchasing from the rightful owners, who have a valid title.

While the matter stood thus, the 2nd respondent Municipality passed a resolution to widen the K.G. road situated at Nandikotkur town. Pursuant to the said resolution, the officials of the 2nd respondent Municipality came to the shops of the petitioners and started giving markings without issuing any notice and without giving an opportunity of being heard to the petitioners. When the said action of the 2nd respondent Municipality was questioned by the petitioners, it was said that the markings are being given in order to demolish the shops for the purpose of road widening. Immediately, the petitioners met the Commissioner of the 2nd respondent Municipality and furnished all the documentary evidence to substantiate that it is a patta land and their structures cannot be demolished without issuing any notice or without paying compensation. However, on 10.05.2016, the officials of the 2nd respondent Municipality came to the spot and tried to demolish their structures, but as there was a protest from the petitioners and at the intervention of the elders, they went away. In those

circumstances, the petitioners are constrained to file the present writ petition.

On 12.04.2016, this Court in WPMP.No.20107 of 2016 was pleased to pass the following order:

“There shall be a direction to the municipal authorities not to resort to any demolition activity except in accordance with due procedure laid down under law.”

It is informed by the learned counsel for the petitioner that pursuant to the above said interim order, no demolition activity is taken place. At this stage, the learned standing counsel appearing for the 2nd respondent Municipality, on instructions, would submit that as of now the 2nd respondent Municipality is not taking up any demolition activity. If any such activity is taken up for the purpose of road widening, the 2nd respondent will issue notice to the petitioners and follow the due process of law.

Taking into consideration the above statement of the learned standing counsel and also looking into the facts and circumstances of the case, this Court is of the opinion that the writ petition can be disposed of.

Accordingly, the writ petition is disposed of directing the 2nd respondent Municipality not to dispossess the petitioners from their respective lands without following the due process of law. No costs.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 25.04.2018.
ES