

THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.4325 of 2013

ORDER:

This writ petition is filed to declare the action of the respondents in demolishing the compound wall of H.No.9-340, situated at Head Post Office Road, Kanigiri Town, Prakasam District, as illegal and arbitrary.

The case of the petitioners is that they are the absolute owners of the subject land; on 5.2.2013 the respondents came to their house and without any notice whatsoever without any approval of master plan, directed to demolish the house for laying a road and that on the said date, they demolished the compound wall partly and proceeding to demolish further constructions. Hence, the writ petition.

Counter affidavit has been filed by respondent No.2 stating that at the time of demolition of the said property, the petitioners have shown the documents of title. According to the said document No.978/1933, the length of the wall is about 84 feet from West to East, but on physical measurement, it was found that the length of the wall is 92 feet. As such, the petitioners have encroached the road site in the length of 8 feet and constructed the compound wall; hence, the demolition was taken up and that the measurements were taken in the presence of the petitioners; the widening of CC road from O-V road to Sai Baba Temple is proposed to facilitate traffic movement, and the widening of road is stopped, due to encroachment of 8 feet (R&B) road by the petitioners.

Counter affidavit is also filed by respondent No.3- Municipality stating that according to the document, the length of

wall is 84 feet from West to East; but on physical measurements the length of the wall is 92 feet and the petitioners have encroached R&B road; the other contentions of the counter affidavit are more or less similar to the averments made by the respondent No.2 in his counter affidavit. When the matter came up for admission on 12.3.2013, the respondents were directed not to undertake further demolition or cutting of trees, unless the affected portion owned by the petitioners is acquired in accordance with law.

As seen from the counter affidavit of respondent Nos. 2 and 3, the petitioners have occupied 8 feet road and constructed the compound wall. No reply affidavits are filed by the petitioners. The counter affidavits do not speak about the issuance of the notices to the petitioners before proposing to demolish the building of the petitioners. The prayer in the writ petition is to declare the action of the respondents as illegal and arbitrary in demolishing the compound wall and not to make any further demolition.

As the counter affidavits have not mentioned anything about the issuance of notice, the respondents are directed to follow the procedure as contemplated under law before demolishing the building of the petitioners bearing house No.9-340, Head Post Office Road, Kanigiri Town, Prakasam District.

The writ petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 14/12/2018

Slk.

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