

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**WRIT PETITION No.28504 of 2008**

**ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a writ in the nature of Mandamus declaring the action of the respondents in interfering with the possession and enjoyment of the petitioner over his land of an extent of Ac. 36.00 guntas in Survey Nos.1905 to 1922 of Akkacheruvupadu Gram Panchayat, Nellore Rural Mandal, Nellore Bit-I, Nellore District, as illegal, arbitrary, contrary to all canons of law and violative of Articles 14, 21 & 300-A of the Constitution of India.

2. I have heard the submissions of Ms. *K.Priyanka Lakshmi*, learned counsel representing Smt. *M.Vidyavathi*, learned counsel appearing for the petitioner; of the learned Government Pleader for Revenue (AP) appearing for the 1<sup>st</sup> respondent; and of the learned Government Pleader for Irrigation and Command Area Development (AP) appearing for the 2<sup>nd</sup> respondent. I have perused the material record.

3. On 30.12.2008, *Rule Nisi* was ordered and the following interim order was granted in W.P.M.P.No.37352 of 2008:

**“There shall be interim direction as prayed for.  
Notice.”**

The above said interim order directing the respondents not to dig the canals in the petitioner's subject land, without following the due process of law, is in operation throughout.

4. Despite a long lapse of time, no counter is filed by the respondents.

5. Learned counsel for the petitioner submits as follows: 'The petitioner is the owner and possessor of the afore-stated land. The 2<sup>nd</sup> respondent and his subordinates started digging the said land and removing the earth from it for the purpose of Tanks/Water canals. For that purpose, they trespassed into the said land of the petitioner. At that time, the petitioner and the owners of neighbouring lands raised objections and tried to restrain the subordinates of the 2<sup>nd</sup> respondent from interfering with the possession of the petitioner over his land and that of the neighbours. But, the subordinate staff of the 2<sup>nd</sup> respondent continued to proceed with the work through the coolies engaged by them. Thereupon the petitioner and others made representations to the 2<sup>nd</sup> respondent. A copy of the representation, dated 03.11.2008, is also filed along with the material papers. Despite the protest of the petitioner and other neighbouring land owners and representations made by them, no action has been taken by the respondents 1 & 2. Further, they did not stop the digging work. Neither a notice was issued nor was the land of the petitioner acquired by following the procedure established by law. However, digging operations and removal of mud from the land of the petitioner was illegally undertaken and was not stopped despite protest and representations. Therefore, the petitioner is constrained to file the writ petition.

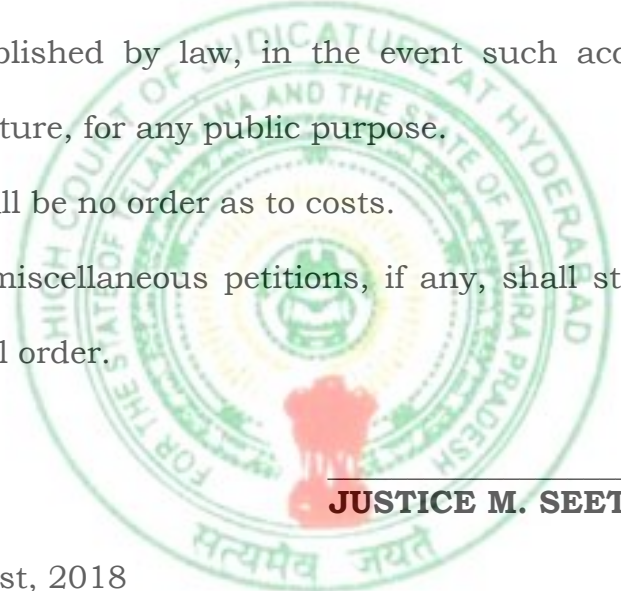
6. In the light of the fact that no counters are filed contradicting the plea of the petitioner and the averments in the writ petition remained uncontradicted, this Court is of the opinion that the writ petitioner's version can be accepted. It follows that the writ petitioner made out a sufficient case for granting the relief claimed in the writ petition and that the writ petition deserves to be allowed.

7. However, learned Government Pleader for Irrigation and Command Area Development appearing for the 2<sup>nd</sup> respondent submitted that in the event this Court is inclined to allow the writ petition, liberty may be reserved to the respondents to proceed with the acquisition of the subject property of the petitioner, by following the procedure established by law, in the event such acquisition is necessary for any public purpose.

8. Taking into account the facts and circumstances of the case, the Writ Petition is allowed. However, it is made clear that this order shall not preclude the respondents from proceeding with the acquisition of the subject property of the petitioner or any part thereof, by following the procedure established by law, in the event such acquisition is found necessary, in future, for any public purpose.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.



**JUSTICE M. SEETHARAMA MURTI**

Date: 30<sup>th</sup> August, 2018

**Note:** Issue C.C. on 04.09.2018.

(B/o.)  
KL

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**



**WRIT PETITION No.28504 of 2008**

Date: 30<sup>th</sup> August, 2018

KL