

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.16125, 16130, 16134, 16137,16138 & 16139 OF 2016

COMMON ORDER:

Heard Mr.Namavarapu Rajeshwar Rao for petitioners, the learned Additional Advocate General for respondent-Dornakal Gram Panchayat.

The petitioners in the instant batch of writ petitions challenge notice issued by Gram Panchayat directing removal of encroachments/obstructions and projections of road within the width of 46 ft, within 7 days from the date of receipt of notice, in default, it is intimated that the authorities shall initiate action to remove the illegal encroachments, obstructions and projections falling within the width of 46 ft and the petitioners will be held responsible for the costs and consequences of removing the encroachments.

The learned counsel appearing for the parties have stated that the cause of action for filing the writ petitions, the grounds of challenge etc., in the writ petitions are substantially same and the difference, if any, in these writ petitions is with reference to the property held by the petitioners or the property which is removed by terming it as encroachment. Hence, the counsel have made submissions referring to W.P.No.16125 of 2016 and have further stated that reference to W.P.No.16125 of 2016 would be sufficient for disposing of the batch of cases.

The issue arises under Section 98 of the A.P. Panchayat Raj Act, 1994 read with G.O.Ms.No.555, Panchayat Raj and Rural Development (Rules), dated 03.12.1999 (for short 'the Act' and 'the Rules' respectively). The impugned action of by the Gram Panchayat for removing alleged encroachments covers NTR statue to Railway Station in Dornakal Village (for short 'the subject road').

The averments are that the petitioners are the owners of houses referred in the impugned notice on either side of old Dornakal (NTR statue) to Indiranagar and also main road leading to railway station. The petitioners were surprised with the presence of the subordinates of Dornakal Gram Panchayat during the second week of April, 2015, undertaking survey of the road. On enquiries, the petitioners were informed that Dornakal Gram Panchayat is proposing to widen the subject road from 22 ft to 46 ft. The survey now undertaken is not for *bona fide* reasons, but on account of political motives the subject road is sought to be widened. The petitioners though state that there is no need for widening the subject road, this Court is not persuaded to refer to these averments, for at any given point of time not only the need of the locality but also the larger public interest are considered and examined by a local body and not petitioners. The petitioners alternatively submit that the proposal for widening the road is vitiated. The petitioners filed W.P.No.19861 of 2015 complaining against apprehended dispossession or demolition of houses of

petitioners therein. On 02.07.2015, this Court passed the following order:

“There shall be stay of demolition of the houses of the petitioners located on the either side of the internal road leading from Old Dornakal to Railway Station through main road and also up to the statute of Subash Chandra Bose. However, this order will not preclude the authorities to proceed in accordance with law.”

The petitioners filed C.C.No.1617 of 2015 complaining disobedience of the orders of this Court. While matter stood thus, the Gram Panchayat issued notices dated 06.07.2015, 14.09.2015 and 20.04.2016 calling upon the petitioners to show cause why encroachment, occupation etc., of road or road margin be removed. On 27.04.2016, the petitioners claim to have filed objections. Thereafter, the final notice dated 03.05.016 calling upon the petitioners to remove the encroachment etc., was issued. Hence, the writ petition.

This Court, on 12.05.2016, directed maintenance of *status quo* and the interim order granted has been extended from time to time.

The Gram Panchayat filed petition and counter affidavit to vacate the interim order and dismiss the writ petition.

The case of 5th respondent is that it is false to state that the petitioners have small houses on either side of the road, and that 22 ft wide road exists from main road to railway station. But, in fact, the width of the road from main road to railway station is 33 ft width 4 ft drainage on either side. The petitioners do not have

competence to say that 22 ft wide road is sufficient for widening. The petitioners are encroachers of Gram Panchayat road, which is 50 feet as per the village map. The question of demolishing 100 houses in the road widening would arise, if the petitioners have really encroached the Gram Panchayat Road. The resolution copy filed by the petitioners is not a resolution and it does not have any number and it shows the request for villagers of internal road. The villagers and the executive committee have intention of restoring the existing road as per the village map, by removing the encroachments on the drainage and the road. The Gram Panchayat issued notice to petitioners on 01.07.2015 requesting them to submit the documents of permissions within 3 days and despite receiving the same, they failed to submit. The Gram Panchayat issued notices dated 06.07.2015, 14.09.2015 and 20.04.2016 asking the petitioners to remove the encroachments. The petitioners submitted objections dated 27.04.2016 in writing and as no valid ground was found, impugned notice dated 03.05.2016 was issued. The road from NTR statue to Railway Station is 50 ft wide i.e., 25 ft either side from centre according to village sketch or map approved by the District Town and Country Planning. The Gram Panchayat keeping in view the larger interest of owners of houses, passed resolution dated 13.05.2015 to remove the encroachments to the extent of 46 ft for free movement of traffic. The Gram Panchayat prays for dismissing the writ petition.

The case of petitioners is that the proposed widening of subject road by the Gram Panchayat is proceeding on uninformed

details on encroachment. According to petitioners, they have not encroached the road, for they have constructed the houses abutting the sewerage line passing through the subject road. The sewerage line is the boundary of the road. The jurisdiction or authority of Gram Panchayat to remove encroachments etc., is not canvassed in the present writ petition, but the petitioners challenge that for removing the encroachment the respondents follow Section 98 of the Act and Rules. According to petitioners, there was no survey of subject road with reference to the notified width of road approved by the competent authority and whether the alleged encroachment by petitioners overlaps into the notified width of the road or not. According to petitioners, a few houses are as old as 100 years and now the encroachment complained against them is basing on a master plan approved in the year 2006. According to them, no survey of the alignment of the road was ever conducted, much less the encroachment is determined and finalized in the presence of the petitioners. Every time notice is given without complying with these procedural requirements and, therefore, the notice is liable to be set aside. The petitioners rely on Section 98 of the Act and G.O.Ms.No.555 dated 03.12.1999, which read thus:

Section 98

Removal of encroachments:-

(1) The Executive Authority may, by notice, require the owner or occupier of any building to remove or alter any projection, encroachment or obstruction, other than a door, gate, bar or ground floor window, situated against or in front of such building and in or over any public road vested in such Gram Panchayat.

(2) If the owner or the occupier of the building proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any local authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the Gram Panchayat shall make reasonable compensation to every person who suffers damages by the removal or alteration of the same.

G.O.Ms.No.555

**“OBSTRUCTIONS ON PUBLIC STREETS
POWER TO REMOVE OBSTRUCTIONS ON PUBLIC
STREETS**

*(G.O.Ms.No.555, Panchayat Raj and Rural Development (rules), dated
03.12.1999)*

In exercise of the powers conferred by Section 96 read with sub-section (1) Section 268 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994) the Governor of Andhra Pradesh hereby makes the following rules relating to power to remove obstructions on Public Street.

1. (i) No person shall build any wall or erect any fence or other obstruction or projections or make any encroachment in any street, smaller or bigger.
- (ii) No door, gate or bar or ground floor window shall be huge or placed so as to open upon any street.
2. The executive authority shall issue a notice after getting the street surveyed and fixing the outer line of the street, the extent of projection or encroachment made by the owner of the house and specify the manner of encroachment and shall fix a date for removal of such obstruction by an order.
3. If the person fails to comply with the notice, the executive authority shall cause the obstruction removed from the street at the cost of such individual and collect it forthwith.

4. No person shall put up a temporary shamiyana or pendal with thatched cover for ceremonies etc., obstructing the traffic.
5. In deserving cases permission may be granted for a few hours to occupy a portion of a road in connection with a marriage or funeral function or religious function with the permission of the executive authority. Any damage caused to the street is liable to be recovered from the persons concerned”.

Mr.Rajeshwar Rao contends that the respondents are required to issue notice after getting the street surveyed and fixing the outer line of the street and thereafter determine the extent of encroachment by an owner of a house, state the manner of encroachment, and thereafter stipulate the date for removal of such obstruction. To contend that such procedure was not at all followed viz., by giving the required details, he draws the attention of the Court to notices dated 06.07.2015, 14.09.2015 and 20.04.2016.

Mr.Rajeshwar Rao to show that the petitioners are pursuing a *bona fide* dispute with the Gram Panchayat, relies on reply dated 03.10.2015 which states that if there is encroachment which is finalized in the presence of petitioners as already stated, the petitioners on their will remove the encroachments. According to him, the Gram Panchayat leaves it for respective owners to keep the road width in front of their house as 46 ft and such procedure is arbitrary and illegal. He prays for setting aside the notices impugned in the writ petitions and also calling upon the Gram Panchayat to follow Section 98 of the Act read with G.O.Ms.No.555. He relies on the decision reported in SMT.B.SHIRAMANI AND ETC., ETC.,

v. EXECUTIVE OFFICER¹. The operative portion in the above decision reads thus:

“A conjoint reading of the rules as referred to above clearly postulate that efforts must be made to serve notice personally on the persons or tendering the same to some adult member or servant of his family and if none of the persons are available, the same has to be sent by registered post and if none of the means aforesaid practicable affixture of the same in some conspicuous part of such last known place. In view of the same, a question may arise whether there was any proper service of notice dt. 6-11-2003 calling upon the petitioners to appear for the enquiry on the scheduled date of hearing. The respondents have not produced any endorsement of the person who intended to serve on the petitioners or their inmates personally and on their failure to receive, he affixed the same on the doors of the houses of the petitioners under Panchanama drafted for such service of notices. Since the procedure for service of notice on the petitioners has not been adhered to, passing of final orders stating that petitioners failed to appear on the date of enquiry is only a make believe story. When the action proposed will have the effect of depriving their right to property, not following the procedure contemplated will cause immense prejudice to the petitioners. In view of the same, the impugned order passed by the first respondent is hereby set-aside. However, and the respondents are at liberty to issue necessary notice specifying the encroachment made by the petitioners including the area which has to be removed as contemplated under Rule 2 of the rules issued in G.O.Ms. No. 555 dated 3-12-99 and only on petitioners' failure to do so, Gram Panchayat shall follow necessary procedure for removing the encroachments, if any”.

Learned Additional Advocate General appearing for Gram Panchayat contends that the subject road was part of a development plan accepted or notified in the year 1922, the

¹ 2004(3) ALT365

petitioners are all encroachers of subject road, the Gram Panchayat has followed the procedure by issuing notices and the technical objection, if any in the notices issued by Gram Panchayat if is accepted by this Court, the acceptance of a technical mistake amounts to misplaced sympathy on petitioners; the larger public interest for which the road is widened is defeated. Therefore, he contends that nothing more needs to be done by Gram Panchayat and the petitioners are under obligation to remove the encroachments on either side of subject road. He further contends that the respondents have afforded full and fair opportunity, but the petitioners have failed to utilize the opportunity given by Gram Panchayat. Finally he contends that the road widening work of subject road is substantially completed except for the patch which is covered by *status quo* orders. He prays for vacation of the order and also dismissing the writ petitions.

I have taken note of respective submissions and perused the record.

From the above consideration, the following point arises for consideration:

“whether the notices impugned in the writ petitions directing demolition of alleged encroachment of road satisfy the requirements of Section 98 of the Act read with Rules?”

As already noted, the petitioners are not questioning the jurisdiction of Gram Panchayat for removing the encroachments. The objections are that the survey of street shall be first undertaken,

the encroachment by an owner is determined and thereafter an order directing removal of such encroachment could be passed. In the case on hand, the petitioners complain that the Gram Panchayat assumes that there is an approved road with 66 ft width and for the present the Gram Panchayat has called upon the encroachers to remove constructions up to 46 ft and the Gram Panchayat did not furnish the alleged survey details or the actual extent of encroachment while conducting enquiry as stipulated by the Rules. Therefore, to remove encroachments as directed by notices is not practicable and if steps as mandated are not undertaken by the respective owners, the Gram Panchayat may demolish the houses indiscriminately. Such demolition would be of any extent treated as encroachment by Gram Panchayat. In such an event, the petitioners will suffer great loss, hardship and deprivation of their proprietary right. The consideration now turns upon whether the notices issued by Gram Panchayat satisfy the requirements of G.O.Ms.No.555 or not. This Court refers to the notices issued by Gram Panchayat and one of them reads thus:

“It is informed to you that the authorities of the Gram Panchayat surveyed and marked the unauthorized encroachments into the public road from NTR Statue to the Railway Station of Dornakal Village which has to be 50 feet wide according to the village plan approved in the year 2006 by the District & Town Planning authorities.

It is stated that, you along with other petitioners filed a writ petition W.P.No.19861 of 2015 before the Hon'ble High Court questioning the said survey and the Hon'ble High Court was pleased to pass an interim order dated 02.07.2015 stating that “in the meanwhile there shall be stay of demolition of the houses of the petitioners located on the either side of internal road leading from old

Dornakal to the Railway Station through main road and also up to the statue of Subash Chandra Bose. However, this order will not preclude the authorities to proceed in accordance with law.”

In view of the above said order, the Gram Panchayat issued notices dated 06.07.2015, 14.09.2015 and 20.04.2016 against the encroachments made by you and calling for objections for taking steps to demolish such encroachments to develop the main road. In view of the above said notices, you filed your objections dated 27.04.2016 stating that denying the contents in the above said notices and saying the subject matter is pending before the Hon'ble High Court and the petitioners got the order of stay in the above writ petition and leveled certain false allegations and demanded the authorities to prove that they have any evidence. On the perusal of the objections filed by you, no valid ground is found to be considered to stop the initiation against the encroachments.

It is stated that according to the Village Sketch Map approved by the District Town Country Planning authorities, the road from NTR statue to the Railway Station is 50 feet wide i.e., 25 feet either side from center. Though the width of the road is 50 feet according to the sketch map approved by the District Town & Country Planning authorities, keeping the interest of owners of the houses, the Gram Panchayat passed a resolution dated 13.05.2015 to remove the encroachments to the extent of 46 feet only for free movement of traffic and to avoid accidents over the said road and accordingly, notices were issued and objections were called for.

The Gram Panchayat authorities are vested with the powers under Sec.53, 96 to 98 A.P. Panchayat Raj Act R/w Rules 2 and 3 issued in G.O.Ms.No.555 Panchayat Raj & Rural Development Rules, 1999 to remove encroachments made on the public roads. Since the objections filed by are not convincible and the Village Plan approved by the District Town and Country Planning authorities clearly show that the road from NTR statue to Railway Station in the Dornakal Village is 50 feet wide.

Therefore, you are directed to remove the encroachments, obstructions and projections if any within

the width of 46 feet within (7) days from the date of receipt this notice failing which the authorities shall initiate the action to remove the illegal encroachments, obstructions and projections on the said public road for which you are held liable for the costs and consequences thereof.

Hence, this notice”.

The Gram Panchayat is not contending that it is not under obligation to issue notice to encroachers but the reply of Gram Panchayat that it has issued more than one notice and fault lies with the petitioners in proving that the petitioners are in possession of area purchased by them, and not encroached the subject road. The outcome to this consideration depends on the content of each one of the notices. As already held by this Court in the decision referred supra, there cannot be deviation of procedure from G.O.Ms.No.555 while removing encroachments by the Gram Panchayat.

This Court after examining the requirement of Rules made under G.O.Ms.No.555 and the procedure followed by the Gram Panchayat, in the case on hand, is convinced that the Gram Panchayat failed to follow the procedure of survey of street, give copy of report to owners of either side of the road, determine the encroachment and thereafter direct removal of encroachment, and in default by house owners at the cost and expense of respective owners, the encroachments could be removed. The Gram Panchayat Act prescribes for procedure in exercising power to remove encroachment vis-à-vis the rights to the owner of his property. Fair procedure for removing the encroachment ought to be followed. In the case on hand, the respondent Gram

Panchayat refers to a master plan approved in the year 2006, admittedly by which time several houses have been constructed all along the subject road. The respondents even after coming to the conclusion that there is encroachment of road, ought to take note of the mandate of Section 98(2) of the Act. In the case on hand, this Court is convinced from the material on record that the procedure stipulated under the Rules is not followed. The issue of notice does not absolve the total burden fastened on Gram Panchayat to demonstrate that there is encroachment and that extent of encroachment is so much. The Gram Panchayat is required both to issue a notice and such notice satisfies the requirements of the Rules. As rightly pointed out by Mr. Rajeswara Rao, if the notices do not refer to the extent of encroachment, survey etc., and failure on the part of an owner will lead to indiscriminate demolition of houses by Gram Panchayat. The notices impugned in the writ petition are set aside for the above reasons.

The Domakal Gram Panchayat is given liberty to serve copy of the published town and country plan extract, and determine the exact extent of house or building required to be demolished by each petitioner, receive their explanation and pass orders in accordance with law.

The writ petitions are ordered and the impugned notices are set aside. The matter is remanded to Gram Panchayat for issuing notice with sufficient details, determine the extent of encroachment, receive explanation and pass orders as

expeditiously as possible, preferably within four weeks from the date of receipt of copy of this order. No costs.

Miscellaneous petitions, if any, pending stands closed.

S.V.BHATT, J

10th April, 2018

Lrkm

