

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.38093 OF 2018

Dated 8th November 2018

Between:

1. Vennela Venkateswara Rao, S/o.Lakshmaiah
and one other.

...Petitioners

And

1. The State of Andhra Pradesh, rep.by its Principal Secretary,
Irrigation & CAD Department, Secretariat, Amaravathi, Guntur
District and two others.

...Respondents

The Court made the following:



THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.38093 OF 2018

ORDER:

The petitioners are challenging the notice dated 22.06.2018 issued by the Assistant Executive Engineer, Drainage Division-II, Mudinepalli, Krishna district directing the petitioners to remove the encroachment into the drainage canal within the time prescribed therein, failing which action would be taken.

2. This order is challenged primarily on the ground that the Assistant Executive Engineer is not competent to issue such notice. According to the learned counsel for the petitioners, the 'Irrigation Officer' is defined under Section 2(e) of the A.P. Irrigation (Construction and Maintenance of Water Courses) Act, 1965 ("the Act" for brevity) and as per the said definition, the Revenue Divisional Officer or the Executive Engineer are empowered or authorised by the Government to exercise powers under the Act and certainly not by an Assistant Executive Engineer.

3. This contention is not denied by the learned Assistant Government Pleader.

4. Having regard to the definition under Section 2(e) of the Act, the notice issued by the Assistant Executive Engineer is *per se* illegal and is, therefore, liable to be set aside on that ground only.

5. However, learned counsel for the petitioner would submit that a part of the obstructing portions were already removed and rest of the portion cannot be removed as it would be depriving access to his property.

6. As the notice impugned is without jurisdiction, the same is set aside. The Writ Petition is allowed granting liberty to the

competent authority to make an assessment of the alleged encroachment and take such course of action as warranted by law within a period of two (2) months from the date of receipt of a copy of this order. The parties shall maintain *status quo* as on today till the decision is taken by the competent authority. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(P.NAVEEN RAO, J)

8th November 2018
RRB

