

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

W.P.No. 4486 of 2019

ORDER:

Heard both sides and perused the material available on record.

The petitioner is owners of the property bearing H.No.3/59, which is situated at service road on N.H. No.7 between km 165 + 860 RHS, Erravalli Cross Roads, Itikyal Mandal, Jogulamba Gadwal District and when the respondents issued a notice dated 25.02.2019 directing the petitioner to remove the unauthorized encroachments on the road, which has been occupied by the petitioner by way of one meter length slab, wall and one meter length steps and in the event of failure to remove the same within 10 days, the respondents would engage men and machinery for removing of such encroachments. At that juncture, the present writ petition is filed. An interim direction as prayed for has been granted and the same is extended from time to time till date.

The 2nd respondent filed counter affidavit enclosing the certain documents and made his submission that the petitioner need not be given any prior notice under Section 26 of the Control of National Highways (Land and Traffic) Act, 2002, they are entitled for periodical inspection of highway land and if they find any unauthorized encroachment on the National Highway, the same shall be removed without any notice and it is also submitted that the respondents have acquired the land for the purpose of laying roads and the petitioner has no locus to approach this Court.

During the course of arguments, both sides have placed the photographs before the Court showing the so called encroachments which are subject matter of the present writ petition and it is not evident from the photographs with regard to the encroachments and also causing accidents. No where in the counter, it is stated regarding any untoward incident has occurred due to the alleged encroachment. However, an encroachment is an encroachment and the same cannot be encouraged. But at the same time, it does not mean that the respondents can unilaterally pass the impugned orders in the form of final notice dated 25.02.2019, which is violative of principles of natural justice. The final order passed by the respondents is converted as show cause notice and the same can be treated as show cause notice as to which the petitioner shall file his explanation.

Keeping in view, the road safety and the safety of the commuters on the road, this Court feels that it would be just and proper to dispose of the writ petition.

Accordingly, the writ petition is disposed of directing the petitioner to submit suitable explanation to the show cause notice, within a period of two weeks from today and the respondents shall examine the explanation of the petitioner and also cause an enquiry in the presence of the petitioner and pass appropriate orders, as expeditiously as possible, not later than four weeks thereafter. Till the entire exercise is completed the respondents shall not take any coercive steps against the petitioner's property.

It is needless to observe that in the event if there is any encroachment detected, the same may be removed. No costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

T. AMARNATH GOUD, J

01.05.2019
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