APHC010071652025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3330]
(Special Original Jurisdiction)

TUESDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT
THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No: 3703/2025

Between:
Bandi Venkata Sesha Reddy, **...PETITIONER**

AND

The State of Andhra Pradesh and others **...RESPONDENT(S)**

Counsel for the Petitioner:
1. T VENU GOPAL

Counsel for the Respondent(S):
1. GP FOR PANCHAYAT RAJ RURAL DEV
2. GP FOR PANCHAYAT RAJ RURAL DEV

The Court made the following:

ORDER:

The present Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

> "…..to issue an order, writ or direction, more particularly one in the nature of **Writ of Mandamus** or any other appropriate Writ, Order or direction declaring the action of the Respondents in trying to demolish the house of the Petitioner situated in Survey No.465, in an extent of land admeasuring 160 square yards, of Vidavalur Village, Vidavaluru Mandal, for widening of the village Road (called it as Buchi village to Utukur village road), in Survey No.465, 465-2, 1106 and 1107 of Vidavalur Village, Vidavaluru Mandal, SPSR Nellore District, without giving any personal opportunity/hearing, without calling for any explanation, pursuant to the notices dated 20.11.2024, 12.12.2024 of the 6th respondent to remove the constructions beside to the Village aforesaid village CC Road Vidavaluru village, Vidavaluru Mandal, SPSR Nellore District, as arbitrary, illegal, unjust, violative of principles of natural justice, contrary to law, discriminatory, violative of the Fundamental Rights guaranteed under Articles 14, 19(1)(g) and 21 and the Constitutional Right guaranteed under Article 300-A of the Constitution of India and consequently set aside the notices of the 6th respondent dated 20.11.2024, 12.12.2024 and further direct the Respondents not to interfere or demolish the petitioner's house/compound wall situated in Survey No.465, in an extent of 160 square yards of land in Vidavalur village, Vidavalur mandal and pass such other order or orders….."

2. The 6th respondent, vide R.C.No.48/2024 dated 20.11.2024 and the proceedings vide Rc.No.48/2024 dated 12.12.2024, issued impugned notices directing the petitioner herein to remove the encroachments, granting 15 days' time and also directed that failing to do so, the said encroachments will be removed by the 6th respondent and the costs incurred to that effect will be collected from the petitioner.

3. The said notices were assailed in the present Writ Petition on the ground that the impugned notice is nonetheless of final order and no

notice was issued prior to delivering the impugned notice and the petitioner relies on the G.O.Ms.No.188, Panchayat Raj and Rural Development (Pts.IV) Department, dated 21.07.2011. Clause-4 of the said G.O. envisages the 'Eviction of Encroachments' and the relevant portion, i.e., sub-clause (i) of Clause-4 of the said G.O. is extracted hereunder:

> "(i) Where it is brought to the notice that any property of the Panchayat is under occupation of any persons the Executive authority (Panchayat Secretary) shall serve a notice to the party concerned and give a brief hearing before proceeding for eviction."

4. Learned counsel for the petitioner would submit that no notice was issued to the petitioner and no opportunity of hearing was given and now the respondents are trying to evict the petitioner forcibly from the subject property. He would further submit that the petitioner has not encroached the property and he is the owner of the property and he relied on the sale deed. Hence, prayed to direct the respondents not to evict the petitioner from the premises without following procedure as established by law.

5. As per sub-clause (i) of Clause-4 of the G.O.Ms.No.188, the Executive Authority shall service a notice to the party concerned and provide a brief hearing before proceeding for eviction. As seen from the impugned notice, no such opportunity was given to the petitioner herein.

6. The Hon'ble Supreme Court in *Rame Gowda (D) by LRs Vs. M.Varadappa Naidu (D) By LRs. and another*[1] in paragraph No.9, it is held that it is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. Even assuming that the petitioner will be the trespasser, still, he would evicted under the procedure as established by law.

7. Learned counsel for the 6th respondent sought time to secure instructions.

8. Sri Ch.Praveen, learned Assistant Government Pleader appearing for the 5th respondent, furnished written instructions submitted by the Assistant Engineer, (R & B) Section, Kovur, to the office of the Government Pleader for T (R&B) Department, High Court of Andhra Pradesh, dated 11.02.2025. As seen from the said proceedings, it is asserted that there is no proposal to remove the road land and they are not disturbing the petitioner for his peaceful possession of his righteous premises.

9. After considering the arguments advanced by both the learned counsel, this Court passes the following order:

The Writ Petition is disposed of, treating the impugned notice as show cause, the petitioner is hereby directed to offer his explanation within a period of ten (10) days from the date of receipt of a copy of this order and, on submitting such explanation to the impugned show cause notice, the authority concerned is hereby directed to examine the same

[1] (2004) 1 SCC 769

and pass appropriate orders in accordance with law and communicate the decision to the petitioner. Till such time, the respondents are directed not to take any coercive steps against the petitioner's property. Learned Standing Counsel for the respondents is hereby directed to inform the respondents about the order dated 11.02.2025.

10. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

As a sequel thereto, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 11.02.2025

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.3703 of 2025

Date: 11.02.2025

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