

Andhra Pradesh High Court - Amravati

Vurum Naga Venkata Somasekhar, vs The State Of Andhra Pradesh, on 11 May, 2023

THE HON'BLE SMT JUSTICE V. SUJATHA

WRIT PETITION No.22934 of 2016

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:-

"to issue a Writ of Mandamus or any other appropriate writ declaring that the action of

respondents 2 to 9 in demolishing 80% of petitioner's two storied building bearing vide Door No.2-76 (Old 2-5) located in an extent of 200 Sq.yards of site in SR.No.65 of Sanivarapupeta, Eluru Mandal, West Godavari District, on 19.6.2016, without issuing any notice, is arbitrary, illegal, capricious, violative of Articles 14, 21, & 300A of the Constitution of India, contrary to the cannons of Natural Justice and mandate of Land Acquisition Rehabilitation And Resettlement Act, 2013 and thereby direct the respondents to pay compensation of Rs.1,00,00,000/- to the petitioner in the interest of justice and grant such other relief as it deems fit..."

2. The petitioner is the absolute owner and possessor of the property to an extent of 200 square yards in RS.No.65 at Sanivarapupeta, Eluru, West Godavari District. In the said property, the petitioner has constructed a two storied building, wherein the ground floor consists of 6 rooms, in which the petitioner has been running shop-cum-Pan Broker business. He has been taking out his livelihood by doing business without any interruption from anybody whatsoever by paying the necessary taxes and charges to the concerned authorities.

3. While the matter being so, on 19.06.2016, the respondents, without issuing any prior notice and without initiating any land acquisition proceedings demolished the petitioner's RCC Building by 80%, for the purpose of road widening. By virtue of the said demolition of a part of the building, the entire remaining portion also got damaged. As such, the petitioner filed the present writ petition.

4. The learned counsel for the petitioner had relied upon a judgment of the High Court of Telangana, at Hyderabad, in Uppalapati Venkata Satyanarayana Prabhas Raju Vs. State of Telangana, Represented by it Prl. Secretary, Revenue Department, Hyderabad and others, wherein, the Court has held that even the encroachers are vested with certain rights, such as a right of notice before eviction, passing of an order and the remedies of appeal and revision.

5. The respondent Nos.4 to 7, filed a counter stating that the father of the petitioner herein i.e., Sri. Vurum Veerabhadra Rao filed O.S.No.1194 of 2004 against the Mandal Revenue Officer, Eluru, and 4 others and sought for permanent injunction, stating that he is resident and got residential upstairs building in Door No.2-5 of Sanivarapupeta, Eluru Mandal, West Godavari District and the father of the petitioner used to pay property tax to the Panchayat and the said property is situated adjacent to the main road of Sanivarapupeta leading to Nuzvid. The said road i.e., 5 sq. yards in R.S.No.64 of

Sanivarapupeta, Eluru Mandal, West Godavari District is under the control of the Roads and Buildings Department and the said suit was dismissed on 08.04.2008 on the file of the Principal Junior Civil Judge, Eluru.

6. It is further stated that after dismissal of O.S.No.1194 of 2004 on the filed of Principal Junior Civil Judge Court, Eluru, the respondent Nos4 to 7 vide letter dated 20.05.2016 addressed a letter to the Tahsildar, Eluru, requesting to take action as per law duly issuing notices U/s.7 and 6 of A.P. Land Encroachment Act to remove the encroachments to widen the road from Km 31.0 to 35.708 and village limits of Sanivarapupeta and Gowravaram and other encroachments if any. Accordingly, the Tahsildar tried to serve notices to the petitioner as well as other encroachments U/s. 7 and 6 of A.P. Land Encroachment Act, but the petitioner refused to receive the said notices and accordingly, panchanama was conducted on 02.06.2016 and 10.06.2016 respectively.

7. Today, when the matter came up for hearing, the learned Government Pleader for Roads & Buildings has produced a copy of the instructions of the Executive Engineer, (R&B), Eluru, vide Letter No.WP.22934/2016/A7/2022, dated 03.02.2023 wherein it is stated that on a letter addressed by the 6th respondent-Deputy Executive Engineer herein, on 20.05.2016, requesting to remove the encroachments for widening of road from Km 31.00 to 35.708 i.e., Duggirala, Sanivarapupeta & Gowravaram village limits in the interest of public, the Tahsildar tried to serve notices to the petitioner as well as other encroachers under Section 7 and 6 of AP Land Encroachment Act. But, as the petitioner has refused to receive the said notices, therefore Panchanama was conducted on 02.06.2016 and 10.06.2016 respectively.

8. The Revenue Authorities have taken possession of the 5 sq. yards of property in RS.No.64 and handed over to Roads and Buildings Department on 14.06.2016. On 19.06.2016, the Tahsildar, Eluru initiated proceedings under Section 144 Cr.PC vide M.C.No.92/16, dated 19.06.2016. As per the Revenue records i.e., adangal the land in Rs.No.64 and 65 belongs to the Government, as such the Tahsildar, Eluru issued notice under Section 7 and 6 of the Land Encroachment Act with regard to the land 5 sq. yards in RS.No.64 and 65 of Sanivarapupeta and hence the respondents, after following the due process of law, have demolished the building to an extent of 5 sq. yards only.

9. Admittedly, as per the counter and as well as the instructions, it appears that the petitioner has encroached to an extent of 5 sq. yards and accordingly, after issuing notice and duly conducting a panchanama, the respondent department have demolished the construction made by the petitioner.

10. In view of the said fact, this Court feels it appropriate to dispose of the writ petition, by directing the respondents not to interfere with regard to the remaining extent of land beyond 5 sq. yards, without following due procedure of law.

11. Accordingly, with the above direction, writ petition is disposed of. There shall be no order as to costs.

Consequently, miscellaneous applications, pending, if any, shall also stand closed.

THE HON'BLE SMT JUSTICE V. SUJATHA Writ Petition No. 22934 of 2016 GSS