

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.1039 OF 2019

Between:

Nadyala Sitaramaiah, S/o Reddemma, Aged
about 73 years and 218 others.

... Petitioners

And

Union of India, represented by its Secretary,
Department of Fisheries, New Delhi and five
others.

... Respondents

Counsel for the petitioners

: Sri K.Ashok

Counsel for respondents

: GP for Municipal
Administration, GP for Revenue,
Sri M.Manohar Reddy,
Standing Counsel

ORDER

The above writ petition is filed to declare the action of respondent No.2 and its officials in demolishing the constructions made by the petitioners in an extent of Ac.3.20 cents in old Sy.No.215, presently known as Brahmananda Reddy Market Area (Tod Market), Tadepalligudem, without following due process, as illegal and arbitrary.

2. Heard Sri Srinivasa Murthy, learned counsel representing Sri K.Ashok, learned counsel for the petitioners; Sri M.Manohar Reddy, learned Standing Counsel appeared for respondent No.5 and learned Assistant Government Pleader for Revenue appeared for respondent No.6.

3. Learned counsel for the petitioners would submit that petitioners and their ancestors have been carrying business for 100 years. He also would submit that suit in O.S.No.38 of 1985 filed to declare the resolution passed by the Municipal Council as illegal, was dismissed. An appeal in A.S.No.1653 of 1992 was also dismissed *vide* judgment and decree dated 21.09.2011. He also would submit that all the petitioners have been carrying business therein. If petitioners are termed as encroachers, the authorities shall follow due process by issuing notices.

4. A counter affidavit was filed on behalf of respondent No.5. It was contended, *inter-alia*, that six months was granted for encroachers from 06.03.2007 for vacating the premises. In fact, in W.A.No.1423 of 2009, it was observed that after completing the construction of shops in Brahmananda Reddy Market, the shops will be allotted to the petitioners as per procedure. The Brahmananda

Reddy Market is in possession and control of respondent No.5. The petitioners having encroached the land been paying encroachment fee.

5. Memo was filed *vide* U.S.R.No.16907/2024 dated 19.02.2024 by the learned counsel for the petitioners. A perusal of memo would indicate that petitioners have been carrying business as on today.

6. It is a settled principle of law that even an encroacher is entitled to notice.

7. In Writ Petition (PIL) Nos.140 of 2022 and batch, Division Bench of this Court held as under:

“(i) The Executive authority, i.e., Panchayat Secretary, of the respective Gram Panchayats in the State shall identify the Gram Panchayat lands, which are unauthorizedly occupied/encroached, and take steps for removal of such encroachments by issuing notice and providing opportunity of hearing to the unauthorized occupants/encroachers in terms of the procedure prescribed in Rules of 2011. This complete exercise shall be done within a period of six months from today.

(ii) So far as the encroachments over the lands concerning the Municipalities/Forest Department / Revenue Department are concerned, even if no separate Rules have been framed prescribing the procedure to be followed in the matter of removal of encroachments over those lands, the officials of the concerned Department, i.e., the Departments of Municipal Administration, Forest and Revenue, shall also undertake and complete the exercise of identification of unauthorised occupations/encroachments over the lands belonging to their respective Departments, within a period of two months from today, and thereafter, take steps for removal of such encroachments by following the principles of natural justice, i.e., issuing notice and

providing opportunity of hearing to the unauthorized occupants/encroachers, within a further period of four months.”

8. As per the order of the Division Bench, Principles of natural justice must be followed before initiating any action even against encroacher.

9. Given the above, without going into other aspects of the matter, the Writ Petition is disposed of directing the respondent authorities not to dispossess the petitioners without following due process of law. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI

Date : 20.03.2024
TVN

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THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION No.1039 OF 2013

Date : 20.03.2024
TVN