

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)

[3299]

TUESDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
WRIT PETITION NO: 10627 OF 2023



Between:

1. Peram Srinivasa Rao, S/o. Bulliyya, Aged 44 years, R/o. H.No. 7-4-F, ST Colony, Ekalavya Nagar, Chimakurthy Mandal, Prakasam District.
2. Peram Tirupataiah, S/o. Bulliyya, Aged 57 years, R/o. ST Colony, Ekalavya Nagar, Chimakurthy Mandal, Prakasam District.
3. Peram Nagaiah, S/o. Ramaiah, Aged 61 years, R/o. ST Colony, Ekalavya Nagar, Chimakurthy Mandal, Prakasam District.
4. Pathruni Nagarjuna, S/o. PVVS Satyanarayana, Aged 48 years, R/o. ST Colony, Ekalavya Nagar, Chimakurthy Mandal, Prakasam District

Petitioners

AND

1. The State Of Andhra Pradesh, Rep. by its Principal Secretary to Government, Municipal & Urban development Department, Secretariat, Velagapudi, Amaravati.
2. Chimakurthy Nagar Panchayat, Rep. by its Commissioner, Chimakurthy Mandal, Prakasam District

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the Final Notice vide proceedings in Roc.No.168/2022/G1, dated 24.04.2023 issued by the 2nd respondent, thereby directing the petitioners to remove the alleged encroachments made on drain within a period of three days without considering the petitioners explanation dated 24.04.2023 submitted to the notice vide proceedings in Roc.No. 168/2022/G1, dated 17.04.2023 issued by the 2nd respondent, without giving any opportunity for personal hearing and without passing speaking order, as illegal, irregular, irrational, violative of provisions of AP Municipalities Act, 1965 and offends Articles 14, 21 and 300-A of constitution of India and consequently set-aside the said notices dated 17.04.2023 and 24.04.2023 issued by the 2nd respondent and further direct the respondents not to interfere in any manner with petitioners' said house properties.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the final notice vide proceedings in Roc.No. 168/2022/G1, dated 24.04.2023 issued by the 2nd respondent and direct the respondents not to interfere in any manner with petitioners' said house properties, Pending disposal of WP 10627 of 2023, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri Kolluri Arjun Chowdary Advocate for the Petitioners, Assistant GP for Municipal Admn Urban Dev for the Respondent No.1, Sri G.Naresh Kumar, Standing Counsel for the Respondent No.2, the Court made the following

ORDER

"Heard Sri Kolluri Arjun Chowdary, learned counsel for the petitioners.

2. Learned AGP for Municipal Administration takes notice for respondent No.1 and Sri G. Naresh Kumar, learned counsel, takes notice for respondent No.2.

3. The petitioners challenge the impugned notice(s) dated 24.04.2023, by which the petitioners have been directed to remove the encroachment on the drainage, within 3 days, failing which it is provided that the same shall be removed by the Municipal Corporation.

4. Submission of the learned counsel for the petitioners is that any notice as contemplated under Section 194 (1) of the A.P.Municipalities Act was not served to the petitioners, but a notice dated 17.04.2023, which in fact was in the nature of the order, directing to remove the alleged encroachment, was given, to which the petitioners submitted reply on 24.04.2023, but without considering the petitioners' reply specifically, as well, the impugned order/notice has been issued. He further submits that any survey was not conducted to find out, if the petitioners encroached upon the drainage or not and if there was some encroachment, to what extent the said encroachment was there. He submits that the house buildings are more than 40 years old, of which the petitioners are owners to which the door numbers were allotted and they are paying the house taxes.

5. Sri G. Naresh Kumar, learned counsel, representing respondent No.2, prays for and is granted three weeks time to file counter affidavit.

6. From perusal of the notice dated 24.04.2023, *prima facie*, the opportunity was not granted to the petitioners to file explanation, but a direction was given to remove the alleged encroachment, within 3 days. As per Section 194 (1) of the A.P.Municipalities Act, for eviction from municipal premises, one month notice is required to be given from the date of service of the notice. It also transpires that in the order/notice, the occupation of the whole or any part of the premises, as the case may be, from which the

unauthorized possession is to be removed should be indicated, but has not been indicated in the impugned order/notice.

7. *Prima facie*, there is no notice of one month as contemplated by Section 194 (1) of the A.P.Municipalities Act.

8. Let counter affidavit be filed by the respondents.

9. If counter affidavit is filed, reply affidavit, if any, may be filed by the learned counsel for the petitioner, within further period of two weeks.

10. List on 27.06.2023.

11. Till the next date of listing, the impugned order/notice dated 24.04.2023, shall remain stayed.

12. However, it shall be open for the 2nd respondent, in the meantime, to make survey to ascertain the encroachment over the drainage and its extent by each of the petitioners, and if there is encroachment, then to proceed, in accordance with law, by giving due notice, as contemplated under A.P.Municipalities Act."

Sd/- K. KASIRAO ACHARI
ASSISTANT REGISTRAR

//TRUE COPY//

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SECTION OFFICER

To,

1. The Principal Secretary to Government, Municipal & Urban development Department, State Of Andhra Pradesh, Secretariat, Velagapudi, Amaravati.
2. Commissioner, Chimakurthy Nagar Panchayat, Chimakurthy Mandal, Prakasam District(1 & 2 by RPAD) ✓
3. One CC to Sri Kolluri Arjun Chowdary Advocate [OPUC] ✓
4. Two CCs to GP for Muncipal Admn Urban Dev, High Court Of Andhra Pradesh. [OUT] ✓
5. One CC to Sri G.Naresh Kumar, Standing Counsel [OPUC] ✓
6. One spare copy

RVK

HIGH COURT

RNTJ

DATED:25/04/2023

LIST ON 27.06.2023

ORDER

WP.No.10627 of 2023

DIRECTION

