



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

[3457]

THURSDAY, THE TWENTY NINETH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX
PRESENT
THE HONOURABLE SRI JUSTICE HARINATH.N
WRIT PETITION NO: 21534/2023

Between:

1. SANKA LAKSHMI DEEPA, W/O VENKATESWARA RAO, 48 YRS R/O 74-10/1-16, LAXMIPATHI NAGAR PATAMATA, VIJAYAWADA KRISHNA DISTRICT
2. SANKA GEETHA SWARUPINI, W/O SRINIVASA RAO, 44 YRS R/O 10-11, RAMALAYAM STREET, TIRUVURU, KRISHNA DISTRICT

...PETITIONER(S)

AND

1. THE STATE OF AP, REP. BY ITS PRINCIPAL SECRETARY MUNICIPAL ADMINISTRATION DEPARTMENT, VELAGAPUDI, GUNTUR DISTRICT.
2. MUNICIPAL CORPORATION OF VIJAYAWADA, TOWN PLANNING SECTION VIJAYAWADA KRISHNA DISTRICT REP BY ITS COMMISSIONER
3. THE DISTRICT COLLECTOR, KRISHNA DISTRICT AT MACHILIPATNAM
4. THE LAND ACQUISITION OFFICER CUMSUBCOLLECTOR, VIJAYAWADA CENTRAL KRISHNA DISTRICT
5. THE TAHSILDAR, VIJAYAWADA NORTH VIJAYAWADA KRISHNA DISTRICT
6. SUPERINTENDENT ENGINEER, ROADS AND BUILDINGS DEPARTMENT GOVT.OF A.P VIJAYAWADA KRISHNA DISTRICT

...RESPONDENT(S):

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 please to issue writ, order or direction, more particularly one in the nature of writ of mandamus declaring the Notice in Rc-G2-11372/2023 dt 29-07-2023 U/S 405 and 406 Of APMC Act 1955 issued by the 2116 respondent to vacate the site in which there are shops bearing No 49-1-4, block-1, Ward No-1, Eluru Road, Gunadala, Vijayawada under Assessment No 1073145366 and 1073145820 in an extent of 184 Sq.Yds and initiating steps to demolish the said premises as illegal and arbitrary and violative of Principles of Natural justice by further declaring that the said action pursuant to the orders of 4th respondent dt 04-07-2023 and the said order is illegal and unjust and also in violation of principles of natural justice consequently directing the respondents not to meddle with the said property of the petitioners in any respect including dispossession from the said property and pass orders and pass

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 pleased to direct the respondents not to demolish the premises of the petitioners bearing Door No 49-1-4, block-1, Ward No-1, Eluru Road, Gunadala, Vijayawada in an extent of 184 Sq.Yds including dispossession of the petitioners from the said site and pass

Counsel for the Petitioner(S):

1. T V S PRABHAKARA RAO

Counsel for the Respondent(S):

1. GP FOR ROADS BUILDINGS

2. GP FOR MUNCIPAL ADMN URBAN DEV

3. GP FOR REVENUE

4. S.V.S.S.SIVARAM SC For VMC

The Court made the following:

THE HONOURABLE SRI JUSTICE HARINATH.N**WRIT PETITION No.21534 of 2023****ORDER:**

1. The petitioners are challenging the notice dated 29.07.2023 issued under Sections 405 and 406 of the APMC Act, 1955, by the 2nd respondent, calling upon the petitioners to vacate the site in their possession and proposing to initiate steps to demolish the construction over the said property. A consequential direction to the respondents not to interfere with the possession of the petitioners is sought for in the writ petition.
2. The learned counsel appearing for the petitioners submits that the petitioners received the notice dated 29.07.2023, duly intimating the petitioners that the petitioners are in possession of land in Sy.No.247/2 and 248/4, which, according to the respondents, is Government poramboke land and that some of the occupants of the nearby areas had occupied Government land classified as Rivas Canal bund. The respondent No. 2 also intimated to the petitioner No. 1 that flat Nos.3 was allotted to the petitioner in Block – 1, 1st floor in New RR Pet, Phase – III and Flat No.8 was allotted to the petitioner No.2 in Block -2, 2nd floor in New RR Pet, Phase – III. The petitioners were required to hand over possession of the subject property and to occupy the allotted flat.

3. The learned counsel for the petitioners submits that the respondents have bundled the petitioners' case with that of other encroachers of Government land and have denied the grant of compensation to the petitioners. The respondents have also not initiated any steps under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for acquiring the petitioners' land. It is also submitted that, on account of bundling the petitioners' case with that of other encroachers in the Gunadala area, the petitioners were not paid any compensation.
4. The learned counsel for the petitioners submits that the petitioners have purchased the property vide registered sale deeds dated 31.12.2014. The vendors of the petitioners had purchased the property vide a registered sale deed dated 29.07.1991. It is submitted that the property of the petitioners is forming part and parcel of Sy.No.248/2 and that the petitioners are in occupation of the property, which was put in possession by the vendors of the petitioners. Thereafter, the petitioners constructed shops over the same. It is submitted that the petitioners' property was assessed for taxes, and they regularly paid the property tax. Prior to paying property tax to the Vijayawada Municipal Corporation, the petitioners had been paying it to the Gram Panchayat.
5. As things stood, the respondent corporation intended to acquire the property for the construction of a railway over bridge (ROB), and the

petitioners were informed that they were in occupation of government land and required to evict from the said land.

6. It is submitted that the petitioners are not against construction of the ROB, however, the respondents ought to have considered the valid registered title documents in favour of the petitioners and only way the petitioners could be evicted from the said property is by acquiring the property of the petitioners by invoking the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
7. This Court, vide order dated 21.08.2023, granted a stay on the impugned notice, by which the petitioners were called upon to vacate the property and hand over the possession thereof to the respondents.
8. The learned standing counsel for the 2nd respondent submits that though the petitioners' property as per the sale deeds is in Sy.No.248/2, the petitioners are in occupation of the site covered under Sy.No.248/4, and that land in Sy.No.248/4 is a government poramboke (vagu) land. It is also submitted that the 1st petitioner was allotted a flat No.8 on the 2nd floor in Block-2 at New RR Peta, Phase – III. The 2nd petitioner was allotted a flat No.3 in Block -1, and the petitioners have occupied the said property.
9. The learned standing counsel appearing for the 2nd respondent also submits that the levy of property tax is not a criteria for the establishment of title over a property and that all properties within the

city, whether encroachments or patta lands, are liable for imposition of tax. It is also submitted that unauthorised constructions without permission are liable to tax. Mere payment of tax would not regularise any such constructions. It is submitted that the petitioners are in occupation of land in Sy.No. 248/4, and this was determined during the survey. Insofar as the respondent is concerned, the petitioners were granted ample opportunity to prove their title. The title of the petitioners, even according to their claim, shall be traced back to 1991. It is for the petitioners to claim the property, which, according to them, is in Sy.No.248/2. Insofar as the property in Sy.No.248/4 is concerned it is classified as Government Poramboke (vagu), which is a highly objectionable encroachment.

10. Heard the learned counsel for the petitioners and the learned standing counsel for the 2nd respondent. Perused the material on record.
11. The petitioners are claiming title by virtue of registered sale deeds, and the property of the petitioners is falling within Sy.No.248/2. Whereas, as seen from the counter filed and also from the annexure filed along with the writ petition, the petitioners are in occupation of land in Sy.No.248/4.
12. The proceedings dated 04.07.2023 issued by the 4th respondent classify the land in Sy.No.248/4 as Government poramboke (vagu), and Ac.0.66 cents of the said land in Sy.No.248/4 falls within the alignment of the proposed ROB. The said proceedings also mentioned the details of the various petitioners who had filed writ petitions, aggrieved by the

respondent authorities' failure to initiate proceedings for the acquisition of the petitioners' property. The 4th respondent has rejected the cases of the petitioners mentioned therein for the grant of any compensation. However, on humanitarian grounds, as many as 114 households are residing on Government land, and 14 households are residing on patta land. All land users were provided with alternative housing.

13. The learned counsel for the petitioners also submits that, by virtue of the stay granted by this Court, the petitioners' property was not completely demolished and that the building still stands, though unused.
14. The only issue for consideration is whether the petitioners' property forms part and parcel of Sy. Nos. 248/2 or 248/4. To determine this issue, the petitioners would have to take appropriate steps to conduct a proper survey and demarcate their property by reference to the title documents.
15. As the petitioners are disputing the survey conducted by the respondents, a fresh survey to demarcate the extent of land in Sy.No.248/4 would suffice for resolving the dispute. If the petitioners property falls beyond Sy.No.248/4 more particularly the Ac.0.66 cents of land in Sy.No.248/4 which is falling within the alignment of ROB, the petitioners certainly would be entitled for grant of compensation as the petitioners also would have to be considered as patta land holders and acquisition of the land of patta holders can only be done by either invoking the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 or in the alternative arriving with the consensual and acceptable alternative with the said land owner.

16. For the aforementioned reasons, the writ petition is disposed off by leaving it open for the petitioners to take all required steps for demarcating their property with reference to their sale deeds. The said exercise should also demarcate land in Sy.No.248/4, which was affected and falling in the alignment for the construction of ROB.
17. It is also left open for the petitioners to claim compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, subject to their being able to establish their right, title and interest, and possession over land in Sy.No.248/2.
18. With the above observations, the writ petition is disposed off. No costs.
As a sequel, miscellaneous applications, pending, if any, shall stand closed.

JUSTICE HARINATH.N

KGM

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION No21534 of 2023
Dated 29.01.2026

KGM