



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

[3331]

**TUESDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 11765/2023

Between:

1. THATI SUDHA DEVI, W/O THATI SUDHA PRASAD, AGED ABOUT 44 YEARS R/O D.NO. 1-90-D, YADAVA STREET, MUDDANUR MANDAL Y.S.R KADAPA DISTRICT.
2. THATI SUDHA PRASAD, S/O T.SUBBARAMAIAH, AGED ABOUT 53 YEARS R/O D.NO. 1-90-D, YADAVA STREET, MUDDANUR MANDAL Y.S.R KADAPA DISTRICT.

...PETITIONER(S)

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY THE PRINCIPAL SECRETARY, PANCHAYAT RAJ AND RURAL DEVELOPMENT DEPARTMENT, SECRETARIAT, AMARAVATHI.
2. DISTRICT COLLECTOR, YSR KADAPA DISTRICT,
3. DISTRICT PANCHAYAT OFFICER, KADAPA Y.S.R KADAPA DISTRICT.
4. MUDDANUR GRAMA PANCHAYAT, MUDDANUR MANDAL, Y.S.R KADAPA DISTRICT. REPRESENTED BY ITS EXECUTIVE AUTHORITY CUM PANCHAYAT SECRETARY.
5. MANDAL SURVEYOR, MUDDANUR MANDAL, YSR KADAPA DISTRICT.
6. VILLAGE SURVEYOR, MUDDANUR VILLAGE AND MANDAL, Y.S.R KADAPA 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 issue an order or writ or direction more particularly one in the nature of writ of mandamus, a. to declare the action of 4th respondent in issuing impugned notice dated 20-04-2023 and demolishing the compound wall of the petitioner's residential house bearing Door No. 1/90-D, Golla street of Muddanur Village and Mandal without following the due process of law envisaged under Rule 4 (i) and (ii) issued in G.O.Ms. No. 188 Panchayat Raj and Rural Development (Rules) dt. 21-07-2011 and consequently direct the respondents to re-construct the demolished structure. b. to direct the respondents more particularly 4th respondent to consider the representation of the petitioner dated 21-04-2023 submitted for conducting Survey of the entire street and to remove encroachments following the due procedure of Law 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 to direct the respondents to consider the representation of the petitioners dated 21-04-2023 submitted for conducting Survey of the entire street and to remove encroachments following the due procedure of Law during the pendency of the writ petition and pass

Counsel for the Petitioner(S):

1.T DIWAKAR REDDY

Counsel for the Respondent(S):

1.GP FOR PANCHAYAT RAJ RURAL DEV

2.Mattegunta.Sudhir, Standing Counsel For Z.P.Ps, M.P.Ps,Gram Panchayats

The Court made the following:

ORDER

Heard Sri P.Diwakar Reddy, learned counsel for the petitioners, Sri Rajesh Kumar, learned Assistant Government Pleader for Panchayat Raj & Rural Development for respondents 1 & 2; Ms.Usha, learned Assistant

Government Pleader for Revenue for respondents 2, 5 & 6, Ms.Kavitha, learned counsel representing Sri M.Sudhir, learned standing counsel for 4th respondent.

2. The petitioners, wife and husband, filed the above writ petition impugning the notice dated 20.04.2023 (Ex.P1) issued by the 4th respondent and thereafter demolishing the compound wall of the house bearing D.No.1/90-D, Golla Street, Muddanur village and Mandal, without following procedure envisaged under Rule 4 (i) & (ii) issued vide G.O.Ms.No.188, Panchayat Raj & Rural Development (Rules), dated 21.07.2011, as illegal and arbitrary and consequently direct the respondents to reconstruct the wall.

3. a) Averments in the affidavit, in brief, are that the petitioners are the absolute owners and possessors of land admeasuring Ac.0.04½ cents in S.No.324/1C of Ward No.1, Golla Street, Muddanur village and Mandal, YSR Kadapa District. They purchased the said land under two registered sale deeds bearing document Nos.2262 and 2267 of 2007 dated 30.10.2007. After getting necessary permission from the 4th respondent, the petitioners constructed a residential house consisting ground and first floor in the year 2014. The compound wall was also constructed as per the plan. Thereafter, petitioners recently renovated the compound wall and installed a new gate in place of the old gate and also increased the height of the compound wall.

b) As the matter stood thus, the 6th respondent issued a notice dated 18.04.2023 (Ex.P2) intimating the petitioners that a survey would be conducted on 20.04.2023 and further requested the petitioners to attend the survey along with relevant documents. The 1st petitioner attended the survey on 20.04.2023 and submitted all relevant documents. However, without proper verification of documents and giving an opportunity to the petitioners, the 4th respondent conducted a survey and issued notice to the petitioners to remove the encroachments marked. The notice issued by the 4th respondent does not indicate the measurement of land encroached upon by the petitioners. The

petitioners made a representation dated 21.04.2023 to the 4th respondent to survey the entire street. However, the respondents 4 to 6 failed to conduct the said survey.

4. The writ petition was listed on 04.05.2023. A coordinate bench of this Court directed the authorities to consider the representation dated 21.04.2023 made by the petitioners and pass appropriate orders within four weeks.

5. a) A counter affidavit was filed on behalf of the 4th respondent, deposed by the Panchayat Secretary. It was contended, *inter alia*, that the villagers made a representation regarding the inconvenience to the free flow of traffic and requested the authority to conduct a survey and remove encroachments made by the petitioners. The 6th respondent, upon request made by the 4th respondent, issued a notice dated 18.04.2023 under Section 23 of A.P. Survey and Boundaries Act, 1923 (for short "**the Act**"), requesting the petitioners to attend the survey scheduled on 20.04.2023 in S.No.324. The 6th respondent surveyed after the due verification of the documents and identified the encroachments made by the petitioners.

b) The Panchayat Secretary of the 4th respondent issued a notice dated 20.04.2023 directing the petitioners to remove the encroachments. The petitioners admitted the encroachments by themselves. The petitioners failed to remove the encroachments in pursuance of the notice referred to supra. The Panchayat Secretary of the 4th respondent questioned them after expiry of the time stipulated in the notice (Ex.P1). The petitioners orally assured the Panchayat Secretary to remove the encroachments. With the acceptance of the petitioners, the Panchayat Secretary of the 4th respondent demolished the compound wall in their presence.

6. No rejoinder was filed by the petitioners to the counter-affidavit filed by the 4th respondent.

7. Learned counsel for the petitioners, while reiterating the averments in the affidavit, would further contend that the 4th respondent failed to adhere to the procedure mandated under Rule 4 of G.O.Ms.No.188 dated 21.07.2011 and G.O.Ms.No.555, Panchayat Raj and Rural Development Department dated 03.12.1999. He would further submit that in Ex.P1, notice the extent of alleged encroachment was not indicated.

8. On the other hand, learned standing counsel for the 4th respondent would contend that after Ex.P1 notice, the compound wall i.e. part of the encroachment, was removed with the consent of petitioners in their presence, and thereafter the petitioners filed the writ petition. He would submit that the petitioners encroached upon 6 feet on the north-east corner and 2 feet on the south-east corner and constructed a compound wall. Likewise, one Eswara Reddy also encroached upon 1½ feet. The respondent-authorities followed the procedure.

9. The points for consideration are:

i) Whether the respondent authority followed the procedure while demolishing the compound wall?

ii) Is the respondent-Panchayat Secretary bound to reconstruct the compound wall?

10. As seen from the pleadings and contentions, there is no dispute regarding the petitioners' purchasing the property and construction of the ground and first floors after getting necessary permission from the Gram Panchayat. A perusal of the survey report filed vide USR No.6850 of 2026 dated 22.01.2026, would discern that the surveyor conducted the survey as per the title documents of the petitioners and found encroachments of 6 feet on the north-east corner and 2 feet on the south-east corner by constructing a compound wall. The survey report would further indicate that one Eswara Reddy also encroached upon 1½ feet. As seen from the registered

documents, the road in between these houses must be 15 feet and after conducting a survey, markings were given to the encroached portion. The boundaries were identified as per the documents, since the land in S.No.324 is shown as patta land.

11. As seen from the averments in the writ affidavit, a survey was conducted in the presence of the petitioners, and in fact, the petitioners participated in the survey and produced their title documents. If the petitioners are not satisfied with the survey, they have a right of appeal under Section 11 of the A.P.Survey and Boundaries Act. However, the petitioners did not file any appeal.

12. As per the interim directions, a survey of the entire street was conducted, and a survey report dated 27.02.2026 was filed. It was pointed out that the layout was not approved, and there is no subdivision in the revenue records. The survey of the entire street was conducted as per the documents of the respective owners. In fact, as per the said report, the width of the entire CC road is 15 feet and houses are situated on either side.

13. No doubt, the contention of learned counsel for the petitioners that Ex.P1 does not indicate the land encroached upon by the petitioners had some force. However, the specific averment in the counter affidavit that the encroached portion was marked and the demolition was carried out in their presence was not rebutted by the petitioners by filing any rejoinder.

14. The statements made by the petitioners and the Panchayat Secretary of the 4th respondent are oath against oath. Both parties are giving conflicting versions on oath. In such a scenario, the evidence needs to be recorded to arrive at a correct conclusion. The act of demolition in this case is a highly disputed question of fact (whether the demolition is high-handed or with the consent of the petitioners). Unless that issue is determined, ordering the reconstruction of the compound wall by the Panchayat Secretary does not

arise. As noted *supra*, one has to lead evidence. Such disputed questions of fact, normally, cannot be adjudicated in a writ petition filed under Article 226 of the Constitution of India. In the considered opinion of this Court, the petitioners, instead of filing the writ petition, ought to have filed a civil suit claiming the reliefs, and the Court will appreciate the evidence.

15. It is a settled position of law that disputed questions of law normally shall not be adjudicated in a writ petition filed under Article 226 of the Constitution of India. The view of the court is fortified by the judgment of the Apex Court.

16. In **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**¹, the Hon'ble Apex Court observed as follows:

“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petitions in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and, also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

17. Given the facts and circumstances of the case, this Court does not find any merit in this writ petition, and hence, the same is liable to be dismissed.

¹ (2010) 8 SCC 329

18. Accordingly, the Writ Petition is Dismissed. No order as to costs.

However, this order will not preclude the petitioners from claiming their reliefs by filing appropriate suits/applications before the appropriate forums. If the petitioners file any such suit/applications, the observations made in this order will not come in the way of the competent authority in deciding the issue, independently.

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

JUSTICE SUBBA REDDY SATTI

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