



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

[3330]

WEDNESDAY, THE TWENTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION NO: 17966/2023

Between:

1. DIVAKALA HEMAMALINI, W/O. SATYA SRIKANTH, AGED ABOUT 32 YEARS, OCC. HOUSE WIFE, R/O. PLOT NO. 42, D.NO. 4-246, VASANTH NAGAR NEAR Z.P. HIGH SCHOOL, PORANKI RURAL, VIJAYAWADA, NTR DISTRICT.

...PETITIONER

AND

1. STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATI, GUNTUR DISTRICT.

2. DISTRICT COLLECTOR, VISAKHAPATNAM DISTRICT.

3. REVENUE DIVISIONAL OFFICER, VISAKHAPATNAM REVENUE DIVISION VISAKHAPATNAM DISTRICT.

4. TAHSILDAR, PENDURTHI MANDAL, VISAKHAPATNAM 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 a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of respondents, particularly 4th respondents highhandedly iii deniolished the asbestos roof sheet house admeasuring with an extent of 200 Sq. Yards in Survey Nu. 90/21 Part and 22

and same was located with D.No.8-102/1 area in gollavillivaniPalem, B.C. Colony, Lakshmipuram, G.V.M.C. Limits, Visakhapatnam District, without issuing any notice, without following any known procedure established by law, without any authority of law and declare the same as illegal, arbitrary and Capricious manner and violative of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the respondents 2 to 4 not to interfere with my possession and enjoyment of the subject landed property thereon 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 2 to 4 not to interfere with my possession and enjoyment of the subject landed property with an extent of 200 Sq. Yards in Survey No. 90/21 Part and 22 and same was located with D.No. 8-102/1 area in gollavillivaniPalem, B.C. Colony, Lakshmipuram, G.V.M.C. Limits, Visakhapatnam District, in the interest of Justice, pending disposal of the main Writ Petition and pass

IA NO: 1 OF 2024

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 extend the Interim Order dt. 20.07.2023 passed in IA No. 1 of 2023 in WP No. 17966 of 2023 as extended from time to time, in the interests of justice and pass

Counsel for the Petitioner:

1.MUCHAKAYALA NARAYANA

Counsel for the Respondent(S):

1.GP FOR REVENUE

The Court made the following:

THE HONOURABLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.17966 OF 2023

ORDER:

The present Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of respondents, particularly the 4th respondent highhandedly demolished the asbestos roof sheet house admeasuring with an extent of 200 Sq.Yards in Survey No.90/21 Part and 22 and same was located with D.No.8-102/1 area in gollavillivaniPalem, B.C.Colony, Lakshmipuram, G.V.M.C. Limits, Visakhapatnam District, without issuing any notice, without following any known procedure established by law, without any authority of law and declare the same as illegal, arbitrary and Capricious manner and violative of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the respondents 2 to 4 not to interfere with my possession and enjoyment of the subject landed property thereon and pass such other order or orders...”

2. Heard Sri Muchakayala Narayana, learned counsel for petitioner and learned Assistant Government Pleader for Revenue for respondents.

3. The short grievance of the petitioner is that the petitioner is the absolute owner and possessor of the property admeasuring 200 Sq.Yards in Sy.No.90/21 part & 22 with D.No.8-102/1 in Gollavillivanipalem, B.C.Colony, Lakshmipuram, G.V.M.C.Limits, Visakhapatnam District. After obtaining necessary permissions, the petitioner constructed an asbestos roof sheet house and has been in peaceful possession of the subject property. Be that as it may, the respondent No.4, without following due process of law, has been

interfering with the petitioner's peaceful possession and enjoyment of the subject property. Hence, the present writ petition has been filed to direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the subject property without following due process as established by law.

4. Learned Assistant Government Pleader furnished written instructions dated 08.11.2023, addressed by the Tahsildar, Pendurthi Mandal, and contended that the petitioner has constructed house in Sy.No.90/20 of Lakshmipuram Village, which is classified as AWD-Gayalu i.e., Government Land.

5. On perusal of the written instructions, it is evident that the petitioner is in possession of the subject property.

6. In ***Rame Gowda v. M.Varadappa Naidu***,¹ a three-Judge Bench of the Hon'ble Apex Court, while discussing the Indian law on the subject, observed as under:

"..It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law."

¹ (2004)1 SCC 769

7. In the case of ***Ram Ratan and others v. State of Uttar Pradesh***², question cropped up before Hon'ble Supreme Court, with regard to right of private defence of trespasser against true owner. Their Lordships held that true owner has no right to dispossess the trespasser by use of force, in case trespasser was in possession in full knowledge of the true owner. Observation made by Hon'ble the Supreme Court is reproduced as under:-

"In State of W.B. and others Vs Vishnunarayan and Associates (P) Ltd. and another, reported in (2002) 4 SCC 134, held that State and its executive officers cannot interfere with the rights of others except where their actions are authorized by specific provisions of law."

8. In, ***H.B.Yogalaya Vs. State of U.P. and others***³, the Hon'ble Apex Court held that without any show cause notice or hearing, neither demolition can take place nor a person may be dispossessed from the property, relevant portion is extracted hereunder:

"Otherwise also principles of natural justice demand that a show-cause notice and hearing be given before demolishing or dispossessing a person from the properties of which he is in possession. Counsel appearing for the respondents did not contest this proposition."

"It is well settled that the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under, the law."

9. In the celebrated case of ***Maneka Gandhi vs. Union of India***⁴, the Hon'ble Supreme Court upheld the phrase that no one shall be deprived of one's life and liberty except procedure established by law as employed

² (1977) 1 SCC 188

³ (2004) 13 SCC 518

⁴ AIR 1978 SC 25

in Article 21 of the Constitution of India. The principles of natural justice demands that the persons who are affected should be heard.

10. Therefore, this Court is of the opinion that the petitioner should not be dispossessed from the subject property except in accordance with the law, as held in ***Rame Gowda's case*** (supra-1).

11. Accordingly, the Writ Petition is disposed of, directing the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's subject property, except by following due process of law. There shall be no order as to costs.

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

JUSTICE TARLADA RAJASEKHAR RAO

Date: 21.01.2026

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THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.17966 of 2023

Date: 21.01.2026

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