

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

WRIT PETITION No.4101 of 2023

ORDER:-

This Writ Petition for a mandamus is filed to declare the action of respondent No.2 in trying to demolish the residential house of the petitioner constructed in an extent of 1½ cents in Sy.No.8 of Suryanagar of Cheemakurthy Mandal in Prakasam District, without issuing prior notice for demolition, as illegal and consequently sought direction to respondent No.2 not to demolish the house of the petitioner.

Heard learned counsel for the petitioner, learned Assistant Government Pleader for Municipal Administration & Urban Development appearing for respondent No.1, Sri M. Manohar Reddy, learned Standing Counsel for respondent No.2.

As per the case pleaded by the petitioner, the petitioner has occupied the land in an extent of 2 cents in Sy.No.8 of Suryanagar of Cheemakurthy Mandal in Prakasam District, in the year 1987 and thereafter that he has constructed a house in an extent of 1½ cents in the said land and also running a pan shop on a cart in the said land. It is stated that he has submitted an application in the year 2003 for grant of DKT patta in terms of BSO-15 considering his possession in respect

of the said property and the said application is still pending with the concerned authority.

While so, the impugned notice, dated 06.02.2023 was issued by the 2nd respondent to the petitioner stating that he has encroached on to the road and constructed the house causing obstruction to the inmates of the locality and thereby directed him to submit his explanation along with documents in support of his title in respect of the said property under Sections 192 and 194 of the A.P. Municipalities Act. The petitioner has submitted his explanation. He has admitted in the said explanation that he has encroached on to the said land and occupied the same and constructed the house on it. It is only pleaded in it that he has applied for regularization and the said application is pending with the concerned authority.

Learned counsel for the petitioner would submit that the land in question is not a road as stated in the impugned notice and it was not an encroachment made on to the road and it was only a patta land which vests with the Revenue Department and it was occupied and the 2nd respondent – Municipality has no right to take any action for removal of the said encroachment.

Repelling the said contention, learned Standing Counsel for the 2nd respondent would submit that admittedly the land in

question is within the limits of the 2nd respondent – Cheemakurthy Municipality and under Section 37 of the Municipalities Act, all the vacant lands within the limits of the Municipality vest with the Municipality and as such the 2nd respondent is competent to initiate action for removal of the encroachments.

This Court finds considerable force in the said contention of learned Standing Counsel for the 2nd respondent. Section 37 of the Municipalities Act clearly mandates that all the vacant sites within the Municipal limits vest with the Municipality. Therefore, it is competent to remove encroachments made on the vacant sites within the Municipal limits. However, they have to follow the due process of law.

Now, the grievance of the writ petitioner is that while his application is pending with the concerned authority for regularization and without passing any orders on it that the authorities of the 2nd respondent have been making an illegal effort to demolish the house of the petitioner without following due process of law.

Sri M. Manohar Reddy, learned Standing Counsel for the 2nd respondent would submit that admittedly the petitioner is an encroacher who occupied the land in question and made

construction of a house. So, the impugned notice was only issued calling upon him to submit his documents in support of his title. The petitioner has submitted his explanation to the same stating that he has encroached on to the land which clearly indicates that he has no title to the land in question and the Municipality would take steps according to law by following due process as contemplated under law regarding removal of the said encroachments.

Therefore, recording the said submission made by learned Standing Counsel for the 2nd respondent that they would follow due process of law, the Writ Petition is disposed of with a direction to respondent No.2 to consider the explanation of the petitioner and to follow due process of law in case it necessitates demolition of the said house in question. Till the 2nd respondent follows due process of law as directed supra, no coercive steps to demolish the house in question shall be taken by the 2nd respondent. No costs.

Miscellaneous petitions, if any pending, in the Writ Petition, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date: 21.02.2023
AKN

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

WRIT PETITION No. 4101 of 2023

Date: 21-02-2023

AKN