

(1991) 03 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5665 of 1988

B. Sreenivasulu and Others

APPELLANT

Vs

The Commissioner, Ananthapur Municipality and Another

RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 192, 193, 228, 336(2)
Constitution of India, 1950 — Article 226

Citation : (1991) 2 ALT 142

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : A. Gopal Rao, for the Appellant; G. Chandrasekhara Reddy and M. Ratna Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishna Rao, J.—In all these writ petitions a common question arises for resolution and hence they may be disposed of by a common order.

2. The Anantapur Municipality, issued a separate notice to each of the petitioners on 21-1-1988 purporting to be Under Sections 192, 193 and 336 of the A.P. Municipalities Act, directing the petitioners to vacate the premises which they are occupying within one week from the date of receipt of the said notice on the ground that they have occupied the road margin without any permission from the Municipality and further their unauthorised occupation is causing much inconvenience to the general public.

3. Interim stay of eviction has been granted in all these writ petitions. The 1st respondent Municipality filed the counter. The owner of the land who is having the land by the side of the road margin and who has an approved lay-out even in the year 1981 filed applications in each writ petition to implead himself as the 2nd respondent. Those WP MPs. have been ordered and he has been impleaded as 2nd respondent in each writ petition.

4. Now the case of the petitioners is that they have been in occupation of the premises since about 40 years, that their names have been entered in the voters' list, that the Municipality has also allotted house numbers and ration cards were also issued to them. Further the State Electricity Board and the Water Works Department have provided electricity and water connections to their houses.

5. The water and electricity connections will be provided by the respective Departments to the persons whoever apply for the same without going into the title to the property in favour of such applicant. Electricity is being supplied to the road side tea-bunks and other small petty shops. House numbers will be allotted by the Municipality for purpose of collection of tax. But that does not confer title on any person over the said property. Supply of water and power and issue of ration cards will not advance the case of the petitioners so long as their occupation is unauthorised. Admittedly even according to the petitioners, the land in question belongs to the Government. The petitioners must prove(sic) that they are having a right to occupy the said premises and their occupation is authorised. Till they obtain such authorisation to occupy the premises in question from the concerned authorities, their occupation must be deemed to be unauthorised and the Municipality is entitled to evict them. Moreover, in the year 1977 one of the owners of the land in S. No. 2659/2 filed an application that he is surrendering the land for the purpose of road widening and subsequently layout also has been granted.

6. The impugned notices have been given Under Sections 192, 193 and 336 of the A.P. Municipalities Act, 1965. Section 192 deals with removal of encroachments, Section 193 deals with the power to allow certain projections and erections. Under Clause (6) of Section 193 of the Act, on the expiry of any period for which a licence or lease has been granted under this section, the Commissioner may, without notice, cause any projection or construction put up under Sub-section (1) or Sub-section (2) to be removed, or cause the occupier to be evicted. According to Sub-Section (6) of Section 193, even in cases where a permission has been granted for erection on a municipal land after the expiry of the licence period, the Commissioner has got right to order removal even without notice. Therefore, even in a case where the appropriate authority granted licence, still after the expiry of the said licence, the projection or construction can be removed without notice or the occupier can be evicted without notice. Therefore, the petitioners cannot contend that the Commissioner of the Municipality has no power to order eviction when he occupied the road margin without any authority either from the Government or from the Municipality.

7. Section 336 of the Act deals with penalties for contravention of any of the provisions of the sections or rules specified in the first column of Schedule VI. Section 336 (2) (c) says:

336 (2) Whoever, after having been convicted of?

(a) and (b) xx xx

(c) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of any of the said sections or rules, continues to contravene the said provisions or to neglect to comply with the said direction or requisition, as the case may be, shall, on conviction, be punished for each day after the previous date of conviction during which he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the fourth column of the said Schedule."

8. The basis on which the impugned notices have been issued is that the petitioners have no right continue to stay in the unauthorised construction and the constructions are causing inconvenience to the public.

9. The learned counsel for the petitioners, Sri A. Gopal Rao, relying on Section 228 argues that before demolition of even a hut or any other construction for that matter, the owner of such construction must be served with an order of demolition.

10. Section 228 contemplates issuance of a prior notice if the construction or reconstruction is made unlawfully by the owner of the premises. In this case, the petitioners are not the owners of the land. Whether the land belongs to the Government or the Municipality, when the petitioners are not the lawful owners of the said land, the Municipality is entitled to issue the impugned notice. Section 228 contemplates a different situation than the one arising in these cases. Even erection of a hut or a building on a Government land by a person who is not the lawful owner of the land, does not entitle him to continue in the same land and he cannot contend that principles of natural justice have been violated in his case.

11. Sri A. Gopal Rao, further contends that according to B.S.O. when there is a dispute with regard to the land, the Commissioner of the Municipality ought not to have issued the impugned notices. But there is no dispute with regard to the situation of the land. The patta granted to A. Kondappa in S. No. 2659/2 clearly indicates that lay-out has been granted. When due lay-out has been approved and Sale deeds are there, the petitioners cannot have any right to occupy the road-margins stating that the land belongs to the Government.

12. Lastly it is contended that the petitioners are all poor people and they have been residing at that place since a long time.

13. In this connection, the learned counsel for the 2nd respondent, who impleaded, cited a judgment of this Court reported in S. Someswara Rao v. S. Tirupathamma.(1988(2) APLJ 469) The facts of that case are, originally a suit was filed by the owners of land abutting a "puntha poramboke" being used as a passage which joins a National Highway for permanent injunction and mandatory injunction against the encroachers of road margin who by constructing sheds for running a school and for residential house completely blocked the access of plaintiffs to the passage. The trial Court dismissed the suit but the first appellate

Court reversed the said decree and judgment and granted both permanent and mandatory injunctions as prayed for. The matter was carried in second appeal. A learned single Judge of this Court referred the questions raised in the second appeal to a Division Bench. In view of the difference of opinion between the two learned Judges of the Division Bench the matter was referred to a third Judge. Jeevan Reddy, J., (as he then was) to whom the matter was referred for opinion held:

"No person can be allowed to occupy a portion of a public road, a highway, or even a public pathway, and argue that even after his encroachment there is sufficient space left for public to pass-by. He cannot be the judge of the requirements of the public, nor can he decide for, himself what extent must be left for public use and what extent must be occupied by him. At this rate, anybody will be free to occupy a portion of such public streets, highways and roads with the spacious argument that there is still space left for public to pass by. Slowly these encroachments may become permanent. It is evident that such a course cannot be permitted."

14. Since lay-out has been approved and the ryots have got access to the main road and the huts or houses of the petitioners are causing obstruction, definitely the Municipality has power to order eviction of the petitioners as the eviction is for a public purpose.

15. The petitioners have not made out any case for interference in these writ petitions, and they are accordingly dismissed. No costs.

16. However, the petitioners are given two months" time from to-day to vacate the premises.