
(2006) 03 AP CK 0129
In the Andhra Pradesh High Court
Case No : Cont. C.No. 745 of 2007

Patel and Company

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 6, 7
Constitution of India, 1950 — Article 14, 21, 300A

Citation : (2007) 5 ALD 860 : (2007) 5 ALT 860

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : V. Ravi Kiran Rao, for the Appellant; Government Pleader for R and B for Respondent Nos. 1 to 4 and Mohd. Moin Ahmed Quadri, for Respondent Nos. 5 to 12, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This Contempt Case is filed seeking to punish the respondents for the alleged wilful and deliberate breach of undertaking given by the Executive Engineer, R&B Department, Kamareddy, in WP No. 3911 of 2003.

2. The petitioner herein filed W.P. No. 3911 of 2003 with the following prayer:

To issue a writ of mandamus directing the respondents herein neither to dispossess the petitioner company nor to demolish the structures and stands of the petitioner company bearing Municipal Nos. 5-3-62 to 5-3-69 (Old) 5-3-217 (New) in Sy. No. 773 situated at National High Way No. 7 Road at Kamareddy, Nizamabad District, on the ground of widening of National Highway No. 7 Road without notice, without causing any enquiry, without following due procedure under law i.e. without following the provisions of L.A. Act and without payment of compensation even by conducting negotiations by duly declaring the action of the respondents 3 and 4 herein in taking steps by putting works on the structures of the petitioner company with an intention to demolish the structures for the purpose of road widening i.e. National High Way No. 7 road without

invoking the provisions of L.A. Act or without payment of any compensation and without following the guidelines issued by the Hon''ble Division Bench of this Court in a batch of writ petitions i.e. W.P. No. 23984 of 1997 and batch dated 3-2-1998 as illegal, arbitrary, violative of principles of natural justice and also violative of Articles 14, 21 and 300A of the Constitution of India.

3. In the said writ petition, the Executive Engineer, R&B NH Division No. 1, Hyderabad, filed a counter-affidavit. Para 2 of the said counter-affidavit reads as under:

I submit that the department is not going to take any action to widen the road, in the petitioner's land in Kamareddy Town. If necessary the petitioner's land will be acquired duly following the procedures laid down in L.A. Act. There is no such intention to the department to encroach into the petitioner's land or to demolish any structures of the petitioner without following the procedures laid down in the L.A. Act for widening the National High Way in Kamareddy Town limits.

4. In view of the said counter-affidavit, this Court by order dated 16-4-2003 dismissed the writ petition. The operative portion of the said order reads as under:

In the counter-affidavit filed by the 3rd respondent, it is stated that the department is not going to take any action to widen the road in the petitioner's land at Kamareddy Town. If necessary the petitioner's land will be acquired by following the due process of law and at present there is no intention on the part of the department to encroach upon the petitioner's land or to demolish any of its structures for widening the National Highway in Kamareddy Town limits. This undertaking is recorded.

In view of the said undertaking, the cause in the writ petition does not survive.

Hence, the writ petition is dismissed. No order as to costs.

5. In this contempt case it is alleged that on 3-7-2005, when a bulldozer was brought nearby the company of the petitioner, having suspected some foul play and apprehending high-handed action on the part of the parties for demolition of structures for the purpose of road widening of N.H.7 Road, the petitioner has placed before the authorities a copy of the order dated 16-4-2003 in WP No. 3911 of 2003 and objected to the proposed demolition. That apart, the petitioner also got issued a telegram through its advocate to all the authorities concerned. In spite of the same, on 4-7-2005 about 14 to 15 persons belonging to R&B Department, who are subordinates of respondents 3 and 4 in the writ petition, and about 15 police personnel and 15 to 20 labourer came to the spot and demolished the building. Hence, this contempt case alleging the action of the respondents would amount to deliberate violation of the order dated 16-4-2003 passed by this Court in WP No. 3911 of 2003 and therefore, they are liable to be punished under the provisions of the Contempt of Courts Act.

6. It is to be noted that the petitioner filed CA No. 861 of 2005 seeking leave to implead the Assistant Executive Engineer, R&B, Kamareddy, Assistant Executive Engineer, National Highway No. 7, Nizamabad District, Deputy Executive Engineer, R&B, NH Sub-Division, Kamareddy, Revenue Divisional Officer, Kamareddy, Sub-Divisional Police Officer, Kamareddy, Mandal Revenue Officer, Kamareddy, Inspector of Police, Kamareddy and Sub-Inspector of Police, Kamareddy as respondents 5 to 12 to this contempt case alleging that their action amounts to breach of undertaking given by the Executive Engineer R&B Department in WP No. 3911 of 2003.

7. I have heard the learned Counsel for both the parties in detail and perused the material on record.

8. At the outset, it is to be noted that in WP No. 3911 of 2003, the Executive Engineer R&B N.H. Division No. 1 filed a counter-affidavit stating that the department was not going to take any action to widen the road and if necessary the land of the petitioner will be acquired following the procedure laid down under the Land Acquisition Act. By recording the same, the writ petition was dismissed by order dated 16-4-2003.

However, the fourth respondent-Revenue Divisional Officer, Kamareddy, in the counter-affidavit filed in this contempt case stated that the petitioner has been in illegal occupation of the public property and therefore, the Mandal Revenue Officer, Kamareddy, issued a notice u/s 6 of the Andhra Pradesh Land Encroachment Act, (for short, "the Act"), but the same was refused by the petitioner on 1-12-2004. Though the notice was sent to the business premises of the petitioner, the same was not received. Since the petitioner did not respond, the Mandal Revenue Officer issued a notice u/s 7 of the Act thereby calling upon the petitioner to submit his case along with the documents relating to the land in his illegal occupation. However, the petitioner failed to respond. Ultimately, the Mandal Revenue Officer passed an order dated 2-7-2005 and in pursuance thereof the petitioner was dispossessed.

9. The Executive Engineer R&B also filed separate counter-affidavit in which it is stated that the National High Way No. 7 is passing through middle of the Kamareddy Town and the width of the road is 50 feet on either side of the road from the centre and the total width of the road is 100 feet. The petitioner established a timber depot at KM 373/4-8 encroaching upon the land belongs to National High Way to an extent of 22 feet width and 344 feet length which is equal to 7568 square feet along with the boundary. As per the survey report, the Mandal Revenue Officer, Kamareddy in his letter dated 14-6-2005 informed that the petitioner-company has encroached upon the National High Way No. 7 to the extent of Ac.0.13 guntas and as per the said report and under instructions issued by the District Collector, Nizamabad, the encroachments were cleared to facilitate free flow of traffic since the encroachments are causing obstructions resulting in accidents.

10. From the averments in the counter-affidavit of both Revenue Divisional Officer as well as the Executive Engineer R&B referred above, it is clear that the demolition which took place on 4-7-2005 was only for the purpose of removing the encroachments made by the petitioner-company on the National High Way, but it is not for the purpose of the widening the road. It is also clear from the counter-affidavit filed by the Revenue Divisional Officer that before removing the encroachments, the procedure as contemplated under the Act was followed.

11. However, the learned Counsel for the petitioner, while placing reliance upon a letter of the Mandal Revenue Officer, Kamareddy dated 24-5-1995 addressed to the Executive Engineer R&B, Kamareddy stating that there is no encroachment of land in N.H. 7 of the petitioner-company, submits that the version of the respondents that the petitioner-company has illegally encroached upon the National High Way is absolutely false.

12. It is relevant to note that in the counter-affidavit filed by the Executive Engineer, R&B, there is a specific reference to the survey report of the Mandal Revenue Officer, Kamareddy, dated 14-6-2005, stating that the petitioner-company has encroached upon the National High Way No. 7. It was also stated that the petitioner-company has occupied illegally to an extent of 7568 square feet of land along with boundaries.

13. As expressed above, since the demolition was not for the purpose of road widening, I am unable to hold that the respondents had acted in breach of undertaking given in WP No. 3911 of 2003. Even assuming that the demolition was not following the due process of law, if the petitioner is aggrieved, it is always open to him to workout the appropriate remedy as available under law with regard to the alleged high-handed action of the respondents, however, but it is not a ground to institute contempt proceedings.

14. As noted above, since the undertaking given by the Executive Engineer in the earlier writ petition was only with regard to the widening of the National High Way, whereas the action complained in this contempt case is with regard to the removal of the alleged illegal encroachment made by the petitioner, I am of the opinion that the allegation of the petitioner that the respondents have committed breach of undertaking cannot be accepted and therefore on that ground the cognizance of the provisions under the Contempt of Courts Act cannot be taken.

15. Accordingly, the contempt case is dismissed. However, liberty is granted to the petitioner to workout the appropriate remedy as available under law for redressal of its grievances if any.