

(2015) 07 AP CK 0070
In the Andhra Pradesh High Court
Case No : W.P. No. 31303 of 2014

Peddina Padmavathi

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 53(1), 98

Citation : (2015) 6 ALD 277 : (2015) 6 ALT 808

Hon'ble Judges : P. Naveen Rao, J.

Bench : Single Bench

Advocate : Vijay Bhaskar Kakunoor B., for the Appellant

Final Decision : Allowed

Judgement

P. Naveen Rao, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for Gram Panchayat and with the consent of learned Counsel this writ petition is disposed of finally. The petitioner claims that she was allotted Plot No. 66 on 21.4.2005 under the Indiramma Housing Scheme. Thereafter she has constructed a house and is living there. While so, the impugned notice is issued directing the petitioner to conduct the survey on her own within four days and submit the measurements to the Panchayat Secretary.

2. Learned Counsel for the petitioner contends that as seen from provision contained in Section 98 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act, 1994"), that such a notice is not in proper exercise of power. He further contends that it is without jurisdiction inasmuch as power to evict is not conferred on the respondent-Gram Panchayat.

3. As seen from the counter-affidavit as well as the notice issued, the stand of the Gram Panchayat is that the petitioner is in occupation of more extent of land than what was assigned to her.

4. According to learned Standing Counsel appearing for Gram Panchayat, the petitioner has encroached on to the road and constructed a house. If what is

stated in the counter and asserted by the learned Standing Counsel is true, the question is whether proper procedure is followed in accordance with the provisions of the Act, 1994 and whether the Gram Panchayat is vested with power to evict the person. According to learned Standing Counsel, in accordance with the proviso appended to Section 53(1) of the Act, 1994, the Gram Panchayat can remove the encroachments and prevent unauthorized use of any road. According to the learned Standing Counsel, the road vests in the Gram Panchayat and, therefore, when the petitioner has made illegal constructions, the Gram Panchayat is competent to take steps to remove the illegal constructions on the road in exercise of such power.

5. There is no quarrel with the power vested in Gram Panchayat by Section 53(1) and Section 98 of the Act 1994. However, such a power can be exercised only when it is established that there was an encroachment. As seen from the provisions contained in Section 98 of the Act, 1994, the executive authority has to issue notice to the owner or occupier of any building, to remove or alter any projections to, the encroachments on or obstruction to the public road vested in the Gram Panchayat. In this case, even according to the present notice, even the Gram Panchayat is not clear about the extent of unauthorized occupation by the petitioner, but it wants the petitioner to undertake survey on her own, obtain Survey Report and submit the same to prove that she is not in occupation of public road. Such exercise should firstly be conducted by the Gram Panchayat and then cause notice on the petitioner with the material available in support of its allegations, but they cannot make vague allegations and ask the petitioner to respond to such vague allegations and substantiate her stand. Therefore, the impugned notice is not sustainable and is accordingly set aside.

6. The writ petition is allowed. However, it is open to the Gram Panchayat to take appropriate course of action if the Gram Panchayat is of the opinion that the petitioner has encroached the public road vested with the Gram Panchayat by causing notice on petitioner, supplying relevant documents and after affording personal hearing. Before taking up such course of action, the Gram Panchayat has to ascertain the factum of encroachment. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.