



ROLE OF ASSISTANT EXECUTIVE ENGINEERS IN CARRYING OUT ENCROACHMENTS EVICTION (A CASE STUDY)

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Role of Assistant Executive Engineers in Carrying out Encroachments Eviction **(A Case Study)**

A. Introduction:

Encroachment of Government Lands and Properties belongs to Water Resources Department is a burning issue these days and eviction of such encroachment has become a huge challenge for the Assistant Executive Engineers. Due to lack of proper Guidelines, Instructions, Memos from the department on this issue, the Assistant Executive Engineers owing to constant persuade from the officials of our department and also officials of Revenue / Municipality / Panchayat departments, **are proceeding ahead with the eviction process as per their own discretion, by way of Issuing Notices to encroachers, Lodging Complaints in the Police Stations against the encroachers and approaching the Tahsildar, Panchayat Secretary to carryout encroachments eviction etc.,.** But unfortunately, as the Assistant Executive Engineers lacks the **'Power (or) Jurisdiction'** as per the Law, to issue notices to encroachers and carryout encroachments **eviction**. The Assistant Executive Engineers are facing aggravating situations before the Hon'ble Courts for issuing the impugned notices and carrying out the encroachments eviction without following the due procedure of Law. The Hon'ble Courts in few cases have even passed orders to take penalizing action against the Assistant Executive Engineers, for not following the due procedure of Law.

In this context, during the General Body Meetings of the Association of A.P Assistant Executive Engineers (APAEAA), West Godavari District (erstwhile) Unit, the association members have requested the Association to prepare a detailed case study on the "Role of Assistant Executive Engineers in carrying out encroachments eviction", with reference to the provisions of the A.P Land Encroachments Act 1905, Government of Andhra Pradesh, G.O.Ms.No 188 dated 21.07.2011; Panchayat Raj & Rural Development Department and in strict adhesion to the orders of the Hon'ble Courts in various encroachments eviction cases pertaining to Govt. lands and properties. Accordingly a detailed case study is prepared and communicated to all the association members, to acquaint themselves regarding the procedure to be followed while dealing with encroachment eviction cases and to safeguard the Assistant Executive Engineers from facing adverse legal complications while dealing with encroachment eviction cases.

B. Gist of AP Land Encroachments Act, 1905:

The AP Land Encroachment Act, 1905, provides measures for checking un-authorized occupation of lands which are property of Government and to carryout eviction of un-authorized occupants. It came into force with effect from 23.12.1904. It contains 16 Sections and it applies to all the Government lands including Public roads, Streets, Water bodies, vested in Local body or Municipality etc...

If any Government lands or property is under unauthorized occupation, as per the section 7 of the act, the Collector, the Tahsildar or the Deputy Tahsildar shall serve section-7 notice to the person in unauthorized occupation of the Government land, calling on him to show cause before or certain date why he should not be proceeded against under section 5 or section 6

If such notice is not obeyed, then as per the section 6 of this act, a subordinate will be deputed to remove any person who may refuse to vacate the same. If the officer was resisted or obstructed by any person, the Collector shall hold a summary inquiry in to the facts of the case. **As per section 6 of this act, it is clearly mentioned that, the Collector, the Tahsildar or the Deputy Tahsildar alone are vested with the powers to evict the unauthorized occupiers of Government Lands.**

As a whole, the AP Land Encroachment Act, 1905, provides the procedural way to evict the unauthorized occupation of Government lands by the District Collector i.e., officer in-charge of Revenue Division and includes a Deputy Collector, a Sub-Collector and an Assistant Collector.

C. Gist of L.A Bill No 6 of 1989:

In continuation to AP Land Encroachment Act, 1905, the AP Legislative assembly in the year 1989, has introduced a bill to amend the AP Land Encroachment Act 1905. In this bill, the following provision was added *"The powers exercisable by the collector or by the Mandal Revenue officer under the section-6 & section-7 shall be exercised by the Deputy Executive Engineer who is in-charge of the execution, operation and maintenance of the Major, Medium and Minor Irrigation systems of the Irrigation Department in respect of eviction of unauthorized occupants of tank bunds, canal bunds, drain bunds and other property of the Irrigation Department within the jurisdiction of such Deputy Executive Engineer"*

It is also mentioned in the bill that *"As the officials of Revenue Department are unable to evict these unauthorized persons in time, it has been decided to delegate the power of eviction of unauthorized occupiers from the encroachments of tank bunds and other property of the Irrigation Department to the officers of Irrigation Department by suitably amending section 6 of the Encroachment act."*

The Andhra Pradesh Land Encroachment (Amendment) Bill 1989, after it is passed by the Legislative Assembly of the State, shall be submitted to the Governor for her assent under Article 200 of the Constitution of India. (Note: This bill is not passed and as a result the amendment hasn't come into force)

D. Gist of Govt. of Andhra Pradesh G.O.Ms.No 188:

Government of Andhra Pradesh, G.O.Ms.No 188 dated 21.07.2011; Panchayat Raj & Rural Development Department made an order regarding "Rules relating to Andhra Pradesh Gram Panchayat (Protection of Property) Rules.

Under Rule-2, Classification of Gram Panchayat Properties and Sub Rule-1, the lands belonging to the Gram Panchayat are classified into three categories. **Under Category-C, Vested with Gram Panchayat** "All Public water courses, Springs, Reservoirs, Tanks, Cisterns, Fountains, Wells, Stand pipes and other water works (as per section 80 of Andhra Pradesh Panchayat Raj Act) Minor Irrigation Tanks, Tank Bunds and all water bodies and vested Porambores (Grazing lands threshing floors, Burning and Burial Grounds, Cattle stands, Cart stands topes)", are the property belonging to the Gram Panchayat. Under Rule-2 and Sub Rule-4, "In respect of Category-C lands, the protection of such lands lies not only with the Gram Panchayat but also with Revenue Department."

Under Rule-4, Eviction of encroachments and Sub Rule-1, "Where it is brought to the notice that any property of the Panchayat is under occupation of any persons the Executive authority (Panchayat Secretary) shall serve a notice to the party concerned and give a brief hearing before proceeding for eviction". Under Sub Rule-4, "The Executive authority (Panchayat Secretary) may take necessary assistance from the police as per section 139 of the Andhra Pradesh Panchayat Raj Act 1994". Under Sub Rule-5, "The evicted property of the Gram Panchayat shall be protected by making fencing or by constructing a compound wall depending on the value of the property and by displaying a notice board".

As a whole, the Government of Andhra Pradesh, G.O.Ms.No 188 dated 21.07.2011; provides the procedural way to evict the unauthorized occupation of Government lands by the Executive authority i.e., the Panchayat Secretary.

E. Hon'ble Court Judgments on Encroachments Eviction:

Case-I: W.P No.33547 of 2017, between Sri Penmetsa Satyanarayana Raju and other, Bhimavaram, W.G District (Petitioner) and The Deputy Executive Engineer, Drainage Sub Division, Bhimavaram, W.G District (Respondent-2)
Brief summary of the case:

The 2nd respondent i.e., the Deputy Executive Engineer, Drainage Sub Division, Bhimavaram, W.G District passed an order on 27.09.2017 under section 6 of the A.P Land Encroachment Act, 1905, asking the 1st petitioner to remove the encroachment over an extent of Ac.0-50 cents of land in Sy.No.370, which is shown as drainage poramboke and is adjoining the land of the 2nd petitioner situated in Sy.No.369, the present writ petition is filed.

Learned counsel appearing for the petitioners submits that the 2nd respondent i.e., the Deputy Executive Engineer, Drainage Sub Division, Bhimavaram, W.G District has no jurisdiction to issue the impugned notice under Section 6 of the Act and in any event the impugned notice should be preceded by a notice under Section 7 of the Act. The 2nd respondent i.e., the Deputy Executive Engineer, Drainage Sub Division, Bhimavaram, W.G District lacks jurisdiction, which is admitted by the learned Government Pleader as well.

Hon'ble Court Order:

In the circumstances, since the impugned notice was issued by an authority, who is not competent to issue the same, the impugned notice dated 27.09.2017 is set aside. However, this order will not prevent the competent authority to take action in accordance with law.

Conclusion:

The Deputy Executive Engineer lacks the power to issue notices to encroachers and to carryout eviction of encroachments as per the Hon'ble Court order in W.P No.33547 of 2017.

Case-II: W.P No.37216 of 2014, between Nallamala John and 7 others (Petitioner) and The Assistant Executive Engineer, NSJC, (Irrigation) O&M Section, Pelluru-2, Pelluru Village, Ongole Mandal, Prakasam District (Respondent-4)

Brief summary of the case:

Petitioner prayed the Hon'ble High Court to issue order or direction more particularly one in the nature of Writ of Mandamus declaring the highhanded action of the 4th respondent i.e., The Assistant Executive Engineer, NSJC, (Irrigation) O&M Section, Pelluru-2, Pelluru Village, Ongole Mandal, Prakasam District in attempting to demolish the petitioners houses situated in Sy.Nos. 151 and 152, Pernamitta Village (presently within the limits of Ongole Municipal Corporation), S N Padu Mandal, Prakasam District; without any authority of law and without enquiry is illegal, arbitrary.

Upon hearing the arguments of Sri I. Koti Reddy Advocate for the petitioners and the Asst. G.P for Irrigation, (AP) for the respondents, a perusal of the impugned notices showed that the same have been issued by the Assistant Executive Engineer, NSJC, O&M Section, Pelluru. However, he has not referred to the provisions of law under which he has exercised his power. At the hearing, the learned Assistant Government Pleader has fairly conceded that under the Public Premises (Eviction of Unauthorized Occupants) Act 1971, or under the A.P Land Encroachment Act, 1905, it is the Revenue Department which is empowered to issue the eviction notices.

Hon'ble Court Order:

As prima facie respondent No. 4 i.e., the Assistant Executive Engineer, NSJC, O&M Section, Pelluru has no jurisdiction to issue the impugned notices, the eviction of the petitioners is stayed, pending further orders.

Conclusion:

The Assistant Executive Engineer lacks the power to issue notices to encroachers and to carryout eviction of encroachments as per the Hon'ble Court order in W.P No.37216 of 2014.

Case-III: W.P No.27809 of 2012, between Sri Mahaganapathi Kodandarama Swamivari Devasthanam, Jonnalagadda Village, Guntur Rural Mandal, Guntur District, Rep by the Chairman (Petitioner) and the Assistant Engineer, Minor Irrigation Section, Collectorate Road, Guntur (Respondent-3)

Brief summary of the case:

The Talab tank in Jonnalagadda village of Guntur Rural Mandal is in the sectional jurisdiction of Minor Irrigation Department. The outer area of tank bund is in the village towards Vejendla road was encroached by Temple authorities to some extent and the same was objected by the Irrigation department officials in the presence of Panchayat Secretary of village and instructed the temple authorities to remove the encroachment duly giving one week time. After lapse of given time, a notice was issued by Assistant Engineer, Minor Irrigation, Guntur to the temple authorities for urgent removal.

This Writ Petition is filed for a mandamus to set aside letter No. 27-M, dated 17-8-2012, of respondent No.3 i.e., the Assistant Engineer, Minor Irrigation Section Collectorate Road, Guntur whereby the petitioner was asked to remove the unauthorized structures raised over the land which purportedly belongs to the Irrigation Department. The petitioner also submitted the respondent No.3 i.e., the Assistant Engineer, Minor Irrigation Section Collectorate Road, Guntur has no power or jurisdiction to issue the impugned notice.

Hon'ble Court Order:

With regard to the power of respondent No.3 i.e., the Assistant Engineer, Minor Irrigation Section Collectorate Road, Guntur to issue the impugned notice, in my opinion, no such power inheres in him to evict a person in unauthorized occupation of the public property. Respondent No.3 i.e., the Assistant Engineer, Minor Irrigation Section Collectorate Road, Guntur can only approach the Tahsildar concerned for initiation of proceedings under the A.P Land Encroachment Act, 1905.

Conclusion:

The Assistant Engineer lacks the power to issue notices to encroachers and to carryout eviction of encroachments. He can only approach the Tahsildar concerned for initiation of proceedings under the A.P Land Encroachment Act, 1905 as per the Hon'ble Court order in W.P No.27809 of 2012.

Case-IV: W.P No.2776 of 2017, Government Pleader for R&B Department, High Court of Hyderabad Letter dated: 19-01-2018, addressed to the Principal Secretary to Govt., Roads & Buildings Department, Amaravathi, Guntur District and to the Engineer-In-Chief, (Admin), Roads & Buildings Department, Vijayawada, Krishna District.

Brief summary of the Letter:

The Government Pleader in his letter brought to the notice before the R&B authorities regarding the removal of encroachments under the A.P Land Encroachment Act, 1905 and Registration of FIRs against the R&B authorities by the Police and non co-operation from the Revenue Authorities. He informed, as per the A.P Land Encroachment Act, 1905 the Revenue Authorities are only the competent authority to removal of encroachments and protecting the lands of the Government/ R&B Department by following the due

procedure as per the Act 1905. In several cases, entire State of A.P without following the due procedure as per the encroachment Act 1905 by the Revenue authorities, they are orally instructing the R&B authorities to remove the encroachments by providing Men & Machinery. Hence the R&B authorities are following the instructions of the Revenue authorities and participating in the removal of encroachments without taking any proceedings regarding encroachments. At that stage, some of the cases before the Hon'ble Court alleging that the R&B authorities are removing the encroachments without issuing notice, even though Revenue authorities are competent to issue notice, but they kept silent and on filing the counters before the Hon'ble Court, stating that there is no involvement of the Revenue authorities.

Hon'ble Court Order:

The Hon'ble Court taking serious view against the R&B authorities and directing the Police to registering the FIR's against the R&B Department Employees in W.P.No.2776 of 2017

Conclusion:

The R&B authorities without any proceedings from the Revenue Authorities/Municipal/Panchayat Raj as per the A.P Land Encroachment Act 1905 to remove encroachments the R&B authorities need not be provide and need not be involve by providing Men & Machinery. In any case, Revenue authorities followed the procedure by issued proceedings regarding removal of encroachment under the Encroachment Act 1905 also need not be provide any Men & Machinery due to the reason, the R&B Department is not the competent authority to removal of encroachments as per the Act 1905 except addressing a letter before the Revenue authorities. If any of the R&B Officer may involve as per the oral instructions of the Revenue Authorities/Municipal/Panchayat Raj or without any proceedings as per A.P Land Encroachment Act 1905 they may face consequences by individual before the Hon'ble Court including criminal prosecution as per the Hon'ble Court order in W.P No.2776 of 2017.

Case-V: W.P No.23133 of 2013, Government Pleader for I&CAD Department, High Court of Hyderabad Letter dated: 23-01-2018, addressed to the Deputy Executive Engineer, Drainage Sub Division, Tadepalligudem.

Brief summary of the case:

It is the case of the petitioner that house site admeasuring 144 sq. yards in Plot No.5 situated in R.S.No.1/1 of Marteru village was given to his father, vide allotment order dated 12.11.1983 and since then, the petitioner and his father are in continuous possession of the same. While so, the 5th respondent (i.e., Deputy Engineer, Irrigation Section, Tadepalligudem; W.G District) gave notice on 11.1.2013, for which the petitioner submitted his representation. But without considering the same, respondents Nos. 3 to 5 gave a warning to the petitioner to remove his house. Hence the writ petition has been filed. The Court heard and perused the material available on record. On 20.08.2013, the Court passed interim order directing that no demolition of the structures shall be undertaken pursuant to the notice issued by the Assistant Executive Engineer, Drainage Section, Marteru; West Godavari District. The main grievance of the petitioner that notice was not served prior to taking action against the petitioner. The Hon'ble Court disposed of the Writ Petition, directing the respondents to issue a notice, if they intend to demolish the structures in the site in question and follow due process of law.

As per the directions of the Hon'ble Court the petitioner was given a notice and reply was received from him. After enquiry with local MRO, it is found that the Patta produced by the petitioner is a fake one. Hence final action has to be taken in accordance with Law.

Hon'ble Court Order:

The respondents are directed to issue a notice, if they intend to demolish the structures in the site in question and follow due process of law. The petitioner is also at liberty to give reply to such notice, if he so desires. The respondents are directed not to take any coercive steps for demolition till decision is taken on the basis of the reply so given by the petitioner after issuance of notice. With the above direction, the Writ Petition is disposed of.

Conclusion:

The Government Pleader for I&CAD Department, High Court of Hyderabad opined that, there is no specific procedure prescribed in Irrigation law or any G.O for eviction of the unauthorized occupants. Hence, necessarily Irrigation department has to follow the Revenue Act and procedure laid down in Revenue Laws. Hence the Deputy Executive Engineer, Drainage Sub Division, Tadepalligudem can only approach the concerned MRO for initiation of eviction proceedings under the A.P Land Encroachment Act, 1905 and also Local Police.

Case-VI: W.P No.26850 of 2018, between Sri Shiridi Sai Baba Trust, Kommuchikkala Village, Poduru Mandal, West Godavari District, Andhra Pradesh Rep. by its Managing Trustee (Petitioner) and The Assistant Engineer, Irrigation Section, Marteru, Penumantra Mandal, West Godavari District (Respondent-4)

Brief summary of the case:

The petitioner is a trust and donated a land to an extent of 0.48 cents of land in survey No.266/12 of Kommuchikkala village by way of registered deed vide Document No.13 of 2007 for construction of the temple. Accordingly the petitioner constructed a temple in the year 2007. Since then it has been in the possession and enjoyment of the said temple. While so, the 4th respondent (i.e. The Assistant Engineer, Irrigation Section, Marteru, Penumantra Mandal; West Godavari District) issued notice dated 09.06.2018 for removal of the encroachments. The said notice was challenged by the petitioner in the Hon'ble Court in Writ Petition No. 124010 of 2018 and the Hon'ble Court vide order dated 12.07.2018 has set aside the notice issued by the 4th respondent (i.e. The Assistant Engineer, Irrigation Section, Marteru, Penumantra Mandal; West Godavari District) issued. At the same time directed the petitioner to submit explanation to the notice dated 26.06.2018 issued by the Tahsildar. The Hon'ble Court further directed the Tahsildar to conduct survey for demarcation between private and government lands.

The Hon'ble Court stated that even after passing the orders by the Hon'ble Court, the 4th respondent (i.e. The Assistant Engineer, Irrigation Section, Marteru, Penumantra Mandal; West Godavari District) not intimated for conducting of survey issued another notice alleging that the petitioner encroached into the property of the Government (Department of Irrigation). The Hon'ble Court stated, the said notice was impugned in the present Writ Petition on the ground that even though the Hon'ble Court directed the respondent authorities to follow the procedure and also directed to conduct survey for demarcation of the land of the petitioner as well as the Government land without doing so the impugned order came to be passed by the 4th respondent (i.e., The Assistant Engineer, Irrigation Section, Marteru, Penumantra Mandal; West Godavari District), which is in violation of the Hon'ble Court orders. Hence the notice is liable to be dismissed.

The Hon'ble Court having regard to the submissions made by both the learned counsel stated, after conducting joint survey as directed, if any encroachments are there, the respondents are conferred ample power to take action by following due process as contemplated under the Act and after providing opportunity of hearing to the petitioner.

Hon'ble Court Order:

For the reasons stated above and on perusal of the material on record, the respondents are hereby directed to comply the orders of this Hon'ble Court dated 12.07.2018 as mentioned above and after conducting joint survey as directed, if any encroachments are found within the premises of the petitioner, the respondents are at liberty to take appropriate action after following due process as contemplated under the Act and after providing opportunity of hearing to the petitioner. Moreover till the completion of the entire exercise as directed, the respondents are hereby restrained to interfere into the possession and enjoyment of the property of the petitioner. With the above said direction, the Writ Petition is disposed of.

Conclusion:

The Assistant Engineer lacks the power to issue notices to encroachers and to carryout eviction of encroachments as per the Hon'ble Court order in W.P No.26850 of 2018. The concern Tahsildar has to conduct survey for demarcation between private and government lands. Encroachment eviction has to be done duly following the process as contemplated under the Act.

F. Final Note:

After an elaborate elucidation regarding the "Role of Assistant Executive Engineers in carrying out encroachments eviction", with reference to the provisions of A.P Land Encroachments Act 1905, Government of Andhra Pradesh, G.O.Ms.No 188 dated 21.07.2011; Panchayat Raj & Rural Development Department and the orders of the Hon'ble Courts in various encroachments eviction cases pertaining to Govt. lands and properties, it is evident that

- The Revenue Department is the custodian of all the Government Lands.
- The competent authority for protecting the lands of the Government (belongs to any Govt. department, including Irrigation Department) is the Revenue Department.
- The competent authority for carryout eviction of encroachments of Government lands is the Revenue Department (as per A.P Land Encroachment Act, 1905) and Panchayat Raj Department (as per Govt. of Andhra Pradesh, G.O.Ms.No 188 dated 21.07.2011; Panchayat Raj & Rural Development Department).
- The Assistant Executive Engineers are not competent and lack the power to issue notices to encroachers and to carryout eviction of encroachments.
- The Assistant Executive Engineers has to address a letter to the Revenue authorities and Panchayat Raj authorities, regarding the encroachments of Government Lands.
- The Assistant Executive Engineers has to approach the Revenue authorities for initiation of proceedings under the A.P Land Encroachment Act, 1905.
- The Assistant Executive Engineers has to approach the Panchayat Raj Department authorities for initiation of proceedings under the Govt. of Andhra Pradesh, G.O.Ms.No 188 dated 21.07.2011.
- The Assistant Executive Engineers need not provide any Men & Machinery for carrying out eviction of encroachments of Government lands.

To conclude, Irrigation department is not the competent authority for carrying out eviction of encroachments, even though the land belongs to the department. **However, the Assistant Executive Engineers (all Irrigation Officials) should invariably extend their complete Co-operation and Support with the empowered departments (Revenue and Panchayat Departments) in carrying out eviction of encroachments in Govt. Lands (Irrigation Lands).**

G. APPENDICES:

- 1.** AP Land Encroachments Act, 1905
- 2.** LA Bill No 6 of 1989
- 3.** Govt. of Andhra Pradesh G.O.Ms.No 188
- 4.** Hon'ble Court Order in W.P No.33547 of 2017
- 5.** Hon'ble Court Order in W.P No.37216 of 2014
- 6.** Hon'ble Court Order in W.P No.27809 of 2012
- 7.** Letter of Government Pleader for R&B Department, High Court of Hyderabad in W.P No.2776 of 2017
- 8.** Letter of Government Pleader for I&CAD Department, HighCourt of Hyderabad in W.P No.23133 of 2013
- 9.** Hon'ble Court Order in W.P No.26850 of 2018
- 10.** Model letter, addressing officials of Revenue and Panchayat Dept. regarding encroachments eviction.

**Team APAEEA
(W.G DISTRICT)**

// THE END //

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Andhra Pradesh Land Encroachment Act, 1905

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Andhra Pradesh Land Encroachment Act, 1905

Act No. 3 of 1905

AP165

Published in Fort St. George Gazette Part IV, Page 595, dated 23-12-1904. An Act to provide measures for checking unauthorised occupation of lands which are property of Government. **Preamble:-** Whereas it has been the practice to check the unauthorised occupation of lands which are the property of Government by the imposition of penal or prohibitory assessment or charge, and whereas doubts have arisen as to how far such practice is authorised by law and it is expedient to make statutory provision for checking such occupation, it is hereby enacted as follows: **1. Short title and extent:-** This Act may be cited as the Andhra Pradesh Land Encroachment Act, 1905. It extends to the whole of the State of Andhra Pradesh.

1A. Definitions:- In this Act, unless the context otherwise requires,-

(a) "*Collector*" means any officer In-charge of a revenue division and includes a Deputy Collector, a Sub-Collector and an Assistant Collector ;

[\[\(b\) "*Deputy Tahsildar*" means the Deputy Tahsildar in independent charge of a taluk or Sub-taluk, the dependent Deputy Tahsildar of a Sub-taluk, or the Headquarters Deputy Tahsildar, in whose jurisdiction the land is situated and includes a Special Deputy Tahsildar.\]](#)

[\[\(c\) "*Tahsildar*" means the Tahsildar in whose jurisdiction the land is situate and includes Special Tahsildar.\]](#)

2. Right of property in public roads, etc., water and lands:- (1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property,-

(a) of any zamindar, poligar, mittadar, jagirdars, shrotriendar or any person claiming through or holding under any of them, or

(b) of any person paying shist, Kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or

(c) of any person holding under ryotwari tenure, or in any way subject to the payment of land-revenue direct to Government; or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence,

and, as to lands, save also in so far as they are temple sites or owned as house site or backyard. be and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land owners, and to all customary rights legally subsisting. (2) All public roads and streets vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government.

Explanation:- In this section, "high water mark" means the highest point reached by ordinary spring tides at any season of the year. **3. Levy of assessment of lands unauthorisedly**

occupied:- (1) Any person who shall unauthorisedly occupy any land which is the property of Government shall be liable to pay by way of assessment,-

(i) if the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period, of his occupation or a part thereof proportionate to the area occupied, as the case may be, provided that, for special reasons, the Collector or subject to his control, the Tahsildar or Deputy Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied.

(ii) If the land so occupied be unassessed, the assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry or wet rate of the village, as the case may be, or when no such rates exist in such manner as may be prescribed in rules or orders under Section 8 :

Provided that payment of assessment under this sub-section, shall not confer any right of occupancy. **Explanation:-** For the purposes of this sub-section occupation for an incomplete portion of a fasli may be deemed to be occupation for a whole fasli. (2) In the case of any class of land which is ordinarily granted on lease or licence, the Government may levy, in addition to the assessment imposed under sub-section (1), a further sum equivalent to the annual rent or fee which would normally be realisable thereon. **4. Conclusiveness of**

decision as to amount of assessment:- The decision as to the rate or amount of assessment, rent or fee, payable under Section 3 shall be recorded in writing and shall not be questioned in any Civil Court. **5. Liability of person unauthorisedly occupying land to penalty, after notice:-** Any person liable to pay assessment under Section 3 shall also be liable at the discretion of the Collector or subject to his control, the Tahsildar or Deputy Tahsildar to pay in addition by way of penalty,-

(i) if the land be an assessed land, a sum not exceeding five rupees or, when ten times the assessment payable for one year under Section 3 exceeds five rupees, a sum not exceeding ten times, such assessment, provided that no penalty shall ordinarily be imposed in respect of the unauthorised occupation of such land for any period not exceeding one year ;

(ii) if the land be unassessed, a sum not exceeding ten rupees, or when twenty times the assessment payable for one year under Section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.

6. Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops, etc.:- (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under Section 3 may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector, Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct - [***]. (2) *Mode of eviction:-* An eviction under this section shall be made in the following manner, namely : By serving a notice in the manner provided in Section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstruction by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction shall continue, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for

the like period : Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Section 183, 186 or 188 of the Indian Penal Code in respect of the same facts. [(3) Any person who unauthorisedly re-enters and occupies any land from which he was evicted under this Section, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.] **7. Prior notice to person in occupation:-** Before taking proceedings under Section 5 or Section 6, the Collector or Tahsildar, or Deputy Tahsildar, as the case may be, shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under Section 5 or Section 6. Such notice shall be served in the manner prescribed in Section 25 of the Andhra Pradesh Revenue Recovery Act, 1864 (Act II of 1864) or in such other manner as the State Government by rules or order under Section 8 may direct. **[7A. Encroachment by group of persons on Government lands and their eviction:-** Where the District Collector knows or has reason to believe that a group or groups of persons without any entitlement and with the common object of occupying any land, which is the property of the Government, are occupying or have occupied any such land, and if such group or groups of persons have not vacated the land on demand by the District Collector or any officer authorised by him in this behalf, the District Collector shall, notwithstanding anything in this Act, order without any notice, the immediate eviction of the encroacher from the land and the taking of possession of the land ; and thereupon it shall be lawful for any officer authorised by the District Collector in this behalf to evict the encroachers from the land by force, taking such police assistance as may be necessary, and take possession of the land. (2) Where, in any proceeding taken under this section, or in consequence of anything done under this section, a question arises as to whether any land is the property of the Government, such land shall be presumed to be the property of the Government until the contrary is proved. (3) Notwithstanding anything in this Act, but subject to the provisions of Section 12-A, any order of eviction passed by the District Collector under sub-section (1) shall be final and shall not be questioned in any Court]. **8. Power to make rules:-** The State Government may make rules or orders either generally or in any particular instance,-

- (a) regulating the rates of assessment, rent or fee leviable under Section 3 ;
- (b) regulating the imposition of penalties under Section 5 ;
- (c) declaring that any particular land or class of lands which are the property of Government shall not be open to occupation;

(d) regulating the service of notices under this Act.

Such general rules or orders shall be made only after previous publication. **9. Recovery of assessment or penalty levied as arrears of land revenue:-** The amount of assessment, rent, fee and penalty imposed under this Act on any person unauthorisedly occupying any land shall be deemed to be land revenue and may be recovered from him as arrears of land revenue under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864. **10.**

Appeal:- (1) An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and (b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and (c) to the Board of Revenue from any decision or order of a District Collector passed otherwise than on appeal. There shall be no appeal against a decision or order passed by the Collector or the District Collector on appeal, but the District Collector may revise any decision or order passed by a Deputy Tahsildar or Collector under this Act, and the Board of Revenue may revise any decision or order passed by any officer under this Act. (2) Pending the disposal of any appeal or petition for revision under this Act, the District Collector or the Board of Revenue as the case may be, may suspend the execution of the order appealed against or sought to be revised. **11. Limitation of appeal:-** No appeal shall be brought after the expiration of sixty days from the date of decision or order complained of provided that in computing the period of sixty days, the time required to obtain a copy of the decision or order appealed against shall be excluded, but the appeal may be admitted after the period hereby prescribed when the appellant satisfies the authority to whom he appeals that he had sufficient cause for not preferring the appeal within the prescribed period. **12. Document accompanying petition of appeal:-** Every petition of appeal under this Act shall be accompanied by the decision or order appealed against or by an authenticated copy of the same. **12A. Power of Government to call for records and pass orders:-** (1) The State Government may, in their discretion, at any time, either *suo motu* or on an application made to them, call for and examine, the records relating to any decision or order passed or proceeding taken by any authority or officer subordinate to them under this Act for the purpose of satisfying themselves as to the legality or propriety of such decision or order, as to the regularity of such proceeding and pass such order in reference thereto as they think fit. (2) The State Government may stay the execution of any such decision, order or proceeding pending the exercise of their powers under sub-section (1) in respect thereof [Inserted by Section 10 of the A.P. Land Encroachment (Extn. and Admt.) Act, 1958 (A.P. Act XXV of 1958). **13. Saving of operation of other laws in force:-** Nothing in this Act contained shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any law for the time being in force : Provided that if any penalty has been levied from

any person under Section 5 of this Act, no similar penalty shall be levied from him under any other law in respect of such occupation. **[14. Bar of jurisdiction of Civil Courts:-** No decision made or order passed or proceeding taken by any officer or authority or the State Government under this Act, not being a decision, order or proceeding affecting the title to the land of a person, shall be called in question before a Civil Court in any suit, application or other proceeding and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by such officer or authority or State Government in presence of any power conferred by or under this Act.] **15. Validation of levy of penal assessment before the passing of Act-Saving of pending suits:-** Every proceeding taken by a Collector for the recovery of any sum of money by way of penal or prohibitory assessment or charge from any person who has unauthorisedly occupied any land hereby declared to be the property of Government shall, if such sum has been recovered prior to the passing of this Act, be deemed to have been lawfully taken, provided that this section shall not apply to any suits pending when this Act comes into force in a Civil Court of First Instance or in a Court of Appeal or affect the validity and operation of any decree or order already passed by a Court of competent jurisdiction. **15A. Certain persons deemed to be in unauthorised occupation of land:-** Where a lease of land which is the property of Government expires or is terminated by the Government or any other authority competent in that behalf, the lessee or any other person remaining in possession of the land after such expiry or termination, or where land granted to any person is liable to be resumed by the Government for the breach or non-observance of any of the conditions subject to which the grant is made and the Government or any other authority competent in that behalf have passed orders resuming the land for such breach or non-observance, the grantee or any other person remaining in possession of the land after the passing of those orders, shall for the purposes of Sections 3 to 15, be deemed to be a person unauthorisedly occupying such land - (Inserted as per A.P.Amendment Act XXIX of 1950.) **16. Saving of lands claimed by right of escheat or reversion:-** Nothing in this Act save as provided in Section 15A, shall apply to any lands claimed by right of escheat or reversion until such lands have been reduced into possession by the State Government.

Schedule

Form of Warrant to be issued by the Collector under Section 6 Seal

To The officer in charge of the Civil Jail at.....Whereas A.B. of.....has resisted (or obstructed) C.D. in removing E.F. (or himself,that is, the said A.B.) from certain lands in the village of.....in the.....taluk, and whereas it is necessary in order to prevent the continuance of such obstruction (or resistance) to commit the said A.B. to close custody,

you are hereby required under the provisions of Section 6 of the Andhra Pradesh Land Encroachment Act, 1905, to receive the said A.B. into the jail under your charge and there to keep him in safe custody for days. Dated this.....day of.....

Signature of Collector

Bare Acts Live

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ఆంధ్ర ప్రదేశ్ రాజ పత్రము

THE ANDHRA PRADESH GAZETTE
PART IV-A-EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 6] HYDERABAD, MONDAY, MARCH 13, 1989.

ANDHRA PRADESH BILLS
ANDHRA PRADESH LEGISLATIVE ASSEMBLY

The following Bill was introduced in the
Andhra Pradesh Legislative Assembly on the
13th March, 1989.

L.A. BILL No. 6 OF 1989.

Bill further to amend the Andhra Pradesh
Land Encroachment Act, 1905.

Be it enacted by the Legislative Assembly
of the State of Andhra Pradesh in the Fortieth
Year of the Republic of India as follows:-

1. This Act may be called the Andhra Pradesh
Land Encroachment (Amendment) Act, 1989.

[1]

9-938

Amendment
of section
1A, Act
III of 1905

2. In the Andhra Pradesh Land Encroachment Act, 1905 (hereinafter referred to as the Principal Act),-

(i) in section 1A, for clauses (b) and (c), the following shall be substituted, namely:-

" (b) "Mandal Revenue Officer" means the Mandal Revenue Officer in whose jurisdiction the land is situated and includes any officer of the Revenue Department empowered by the Government to exercise the powers and perform the functions of the Mandal Revenue Officer under this Act;"

(ii) throughout the principal Act, for the words "Tahsildar or Deputy Tahsildar", the words "Mandal Revenue Officer" shall be substituted.

Amendment
of section 6.

3. In section 6 of the Principal Act, to sub-section (1), the following proviso shall be added, namely:-

"Provided that the powers exercisable by the Collector or by the Mandal Revenue Officer under this section and section 7 shall be exercised by the Deputy Executive Engineer who is incharge of the execution, operation and maintenance of the Major, Medium and Minor Irrigation systems of the Irrigation Department in respect of eviction of unauthorised occupants of tank bunds, canal bunds, drain bunds and other property of the Irrigation Department within the jurisdiction of such Deputy Executive Engineer".

Amendment
of section 10.

4. In the principal Act, in section 10,--

Amendment
of section
1A, Act
III of 1905

2. In the Andhra Pradesh Land Encroachment Act, 1905 (hereinafter referred to as the principal Act),--

(i) in section 1A, for clauses (b) and (c), the following shall be substituted, namely:-

" (b) "Mandal Revenue Officer" means the Mandal Revenue Officer in whose jurisdiction the land is situated and includes any officer of the Revenue Department empowered by the Government to exercise the powers and perform the functions of the Mandal Revenue Officer under this Act;"

(ii) throughout the principal Act, for the words "Tahsildar or Deputy Tahsildar", the words "Mandal Revenue Officer" shall be substituted.

Amendment
of section 6.

3. In section 6 of the Principal Act, to sub-section (1), the following proviso shall be added, namely:-

"Provided that the powers exercisable by the Collector or by the Mandal Revenue Officer under this section and section 7 shall be exercised by the Deputy Executive Engineer who is incharge of the execution, operation and maintenance of the Major, Medium and Minor Irrigation systems of the Irrigation Department in respect of eviction of unauthorised occupants of tank bunds, canal bunds, drain bunds and other property of the Irrigation Department within the jurisdiction of such Deputy Executive Engineer".

Amendment
of section 10.

4. In the principal Act, in section 10,--

(a) for sub-section (1) the following sub-section shall be substituted namely:-

"(1) An appeal shall lie,-

(a) to the Collector from any decision or order passed by a Mandal Revenue Officer under this Act;

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal;

(c) to the Commissioner concerned from any decision or order of a District Collector otherwise than on appeal; and

(d) to the Executive Engineer concerned of the Irrigation Department from any decision or order of a Deputy Executive Engineer passed under section 6 or section 7.

There shall be no appeal against a decision or order passed by the Collector, to District Collector or the Executive Engineer on appeal; but the District Collector may revise any decision or order passed by a Mandal Revenue Officer or Collector under this Act, and the Commissioner concerned may revise any decision or order passed by any officer under this Act."

(b) in sub-section (2) for the words "the Board of Revenue" the words "the Commissioner concerned" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Under section 6 of the Andhra Pradesh Land Encroachment Act 1905, the Collector, the Tahsildar or the Deputy Tahsildar alone are vested with the powers to evict the unauthorised occupiers of Government lands.

Several instances have come to the notice of the Government where tanks, tank bunds, canal margin, drains etc., are occupied by unauthorised persons and that they are causing damage to the works and obstructing free flow of water. As the officials of Revenue Department are unable to evict these unauthorised persons in time, it has been decided to delegate the power of eviction of unauthorised occupiers from the encroachments of tank bunds and other property of the Irrigation Department to the officers of Irrigation Department by suitably amending section 6 of the Act. Opportunity has also been taken to substitute the reference to Board of Revenue with Commissioner and the reference to Tahsildars and Deputy Tahsildars with Mandal Revenue Officers consistent with the present Revenue administration.

This Bill seeks to give effect to the above decision.

D. VEERAIHA CHOWDARY,
Minister for Revenue.

1991
March 13, 1989] ANDHRA PRADESH GAZETTE EXTRAORDINARY

5

MEMORANDUM UNDER RULE 95 OF THE RULES OF
PROCEDURE AND CONDUCT OF BUSINESS IN THE
ANDHRA PRADESH LEGISLATIVE ASSEMBLY.

The Andhra Pradesh Land Encroachment (Amendment) Bill 1989, after it is passed by the Legislative Assembly of the State, may be submitted to the Governor for her assent under Article 200 of the Constitution of India.

D. VEERAIHA CHOWDARY,
Minister for Revenue.

C. VENKATESAN,
Secretary to Legislature.

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Panchayat Raj & Rural Development Department – Rules relating to Andhra Pradesh Gram Panchayat (Protection of property) Rules – Orders – Issued.

PANCHAYAT RAJ AND RURAL DEVELOPMENT (Pts.IV) DEPARTMENT

G.O.Ms.No. 188

Dated: 21st July, 2011

Read the following:-

1. From the Hon'ble Supreme Court of India, Order dt.28.1.2011 in Civil Appeal No.1132/2011 SLPC.No.3109/2011 filed by Jagpal Singh and others versus State of Punjab and others.
2. From the CPR&RE, Hyd., D.O.Lr.No.2920/ CPR & RE/D2/2011, dt.2.4.2011 and Letter dt.17.05.2011.

>><<

ORDER:

The Hon'ble Supreme Court of India, in its order dated 28.1.2011 in Civil Appeal No.1132/2011 @ SLP C.No.3109/2011 filed by Jagpal Singh and others versus State of Punjab and others has given directions to the all the State Governments that the State Governments to prepare scheme for eviction of illegal / unauthorized occupation of Gram Sabha / Gram Panchayats / Poramboke / Shamlat lands and the same should be restored to the Gram Sabha / Gram Panchayat for the common use of villagers of the Village. The said scheme should provide for the speedy eviction of such illegal occupants, after giving him/her a show cause notice and a brief hearing. Keeping in view said judgment of the Hon'ble Supreme Court of India, the Government have examined the matter in accordance with the provisions of the Andhra Pradesh Panchayat Raj Act'1994 (Act No.13 of 1994) and decided to issue the following rules.

The following Notification will be published in the Extra Ordinary Issue of the Andhra Pradesh Gazette, Dated 22.07.2011.

NOTIFICATION

In exercise of the powers conferred under sub-section (1) of Section 268 of the Andhra Pradesh Panchayat Raj Act'1994 (Andhra Pradesh Act No.13 of 1994), the Governor of Andhra Pradesh here by makes the following rules.

RULES

1. Short title:-

- (i) These rules may be called the Andhra Pradesh Gram Panchayats (Protection of property) Rules, 2011.
- (ii) These rules shall come into force with immediate effect.

2. Classification of Gram Panchayat properties :-

- (1) The lands belonging to Gram Panchayats shall be classified into three categories as follows:-

Contd..2

(i) CATEGORY- A: OWN AND ACQUIRED

All general roads and drains, cattle pounds, cattle sheds, common market areas, 10% open spaces in layouts, existing parks, lands purchased by the Gram Panchayats.

(ii) CATEGORY-B: GIFTS, DONATIONS, TRANSFER OF LANDS to Gram Panchayats.

(iii) CATEGORY-C: VESTED WITH GRAM PANCHAYATS

All public water works, All public water courses, Springs, Reservoirs, Tanks, cisterns, Fountains, Wells, Stand Pipes and other water works (as per section 80 of Andhra Pradesh Panchayat Raj Act) Minor Irrigation Tanks, Tank bunds and all water bodies and vested porambores (Grazing Lands threshing floors, Burning and Burial grounds, cattle stands, cart stands topes.

(2) The Gram Panchayats shall keep on accumulating properties (category A & B) year by year perpetually, as and when new Layout plans are approved in Gram Panchayat area.

(3) In respect of lands identified under categories A & B, the responsibility of protection of such lands lies solely with the Gram Panchayat.

(4) In respect of category 'C' lands, the Protection of such lands lies not only with Gram Panchayat but also with Revenue Department.

3. Procedure to be followed for protection of Gram Panchayat Properties:-

(a) Preparation of inventory:

- (i) The executive authority (Panchayat Secretary) of the Gram Panchayat shall prepare inventory of landed properties of the Gram Panchayats based on FMB (Field Measurement Book) / FSA (Field Survey Atlas) and field inspections.
- (ii) District Collectors shall instruct the Tahsildars to provide the above information to the executive authority (Panchayat Secretary).
- (iii) Web based solutions may be evolved over a period of time to locate Gram Panchayat lands in the public domain.

(b) Validation in Gram Sabha and Gram Panchayat:

- (i) After obtaining the land inventory details the executive authority (Panchayat Secretary) shall convene Grama Sabha and validate the information.
- (ii) Later the Gram Panchayat shall convene its meeting to discuss and approve the land inventory details by passing a resolution.

- (iii) If any objections are received in the Grama sabha and Grama Panchayat meetings, the same shall be settled as per the recorded evidence.

(c) Gazette publication and placing in web:

- (i) The Gram Panchayat land inventory details approved by the Gram Panchayat shall be published in the District Gazette.
- (ii) The information published in the district Gazette may be placed in the web domain and updated from time to time.

4. EVICTION OF ENCROACHMENTS:

- (i) Where it is brought to the notice that any property of the Panchayat is under occupation of any persons the Executive authority (Panchayat Secretary) shall serve a notice to the party concerned and give a brief hearing before proceeding for eviction.
- (ii) Suitable orders shall be passed by the Executive authority (Panchayat Secretary) before actual eviction takes place.
- (iii) The Divisional Panchayat Officer will conduct a monthly review of these cases for protecting Gram Panchayat properties in his jurisdiction through monitoring the process of eviction. He will also give periodical reports to District Panchayat Officer, who will review the cases once in two months.
- (iv) The Executive authority (Panchayat Secretary) may take necessary assistance from the police as per section 139 of the Andhra Pradesh Panchayat Raj Act'1994.
- (v) The evicted property of the Gram Panchayat shall be protected by making fencing or by constructing a compound wall depending on the value of the property and by displaying a notice board.
- (vi) A permanent register on encroachment of Panchayat properties shall be maintained in all Gram Panchayats and the same will be validated in the Gram Sabha and Gram Panchayat meetings at least twice in a year.
- (vii) Aggrieved parties may file representations to the Executive authority (Panchayat Secretary) concerned by marking a copy to the Divisional Panchayat Officer.
- (viii) The petitions filed by the aggrieved parties will be monitored and disposed of by the Divisional Panchayat Officer / District Panchayat Officer.

5. ADMINISTRATIVE ARRANGEMENTS : A separate cell at district level in the Office of the District Panchayat Officer by name Gram Panchayat (Protection of properties) shall be constituted to monitor and protect Gram Panchayat properties from time to time.

Contd...4

6. The supporting staff for taking up these activities at the Divisional Panchayat Office / District Panchayat Office shall be provided as per necessity, from out of the available Junior Assistants to assist the Divisional Panchayat Officer / District Panchayat Officer in the eviction process from time to time.

7. At District level a High Power Committee shall be constituted with the following Officers to meet every three months and review the progress of identification and removal of encroachments.

1) District Collector	–	Chairman
2) Joint Collector	–	Member
3) Superintendent of Police	–	Member
4) Superintending Engineer (P.R)	–	Member
5) Superintending Engineer (R&B)	–	Member
6) Superintending Engineer (Irrigation)	–	Member
7) Assistant Director (Survey & Land Records)	–	Member
8) Assistant Director (Mines)	–	Member
9) District Panchayat Officer	–	Member Convenor

8. At Commissionerate level, a Vigilance & Enforcement Wing shall be constituted with Additional Commissioner / Deputy Commissioner to protect the Gram Panchayat properties and to monitor the activities of district level Cells.

9. Regulation of any matter:-The Commissioner, Panchayat Raj and Rural Employment shall be the final authority in regard to the regulation of any matter arising out of the application of these rules.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr. RAJIV SHARMA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Commissioner, Printing, Stationery and Stores Purchase,
Chanchalguda, Hyderabad (with a request to publish in the Gazette
Notification and furnish 500 copies immediately)

Copy to:

The Commissioner, Panchayat Raj and Rural Employment, A.P., Hyderabad.
All the District Collectors in the State.
All the Chief Executive Officers, Zilla Praja Parishad in the State.
All the District Panchayat Officers in the State
The P.S. to Special Secretary to C.M
The P.S. to Minister (PR&RWS)
The P.S. to Minister (Finance)
The P.S. to Special Chief Secretary to Govt. (Finance)
The P.S. to Principal Secretary to Govt. (PR)
Sc/Sf.

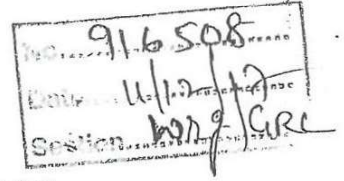
//FORWARDED::BY ORDER//

SECTION OFFICER

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF OCTOBER
TWO THOUSAND AND SEVENTEEN

PRESENT



THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION NO: 33547 OF 2017

Between:

- 1 Penmetsa Satyanarayana Raju, S/o. Subba Raju, aged 54 years,
- 2 Penmetsa Yagna Sri Venkata Subrahmanya Varma,
S/o. Penmetsa Satyanarayana Raju aged 24 years

completed

Both are R/o.1-10-5, 2nd Street, Adharshnagar, Bhimavaram, West
Godavari District

.....PETITIONERS

AND

- 1 State of Andhra Pradesh,
Rep by its Principal Secretary, Minor, Medium & Major irrigation Department,
Building No.4, Ground floor, Room.No.216, A.P. Secretariat, Velagapudi,
Krishna District.
- 2 The Deputy Executive Engineer, Drainage Sub Division, Bhimavaram, West
Godavari District.
- 3 The District Collector, West Godavari District, Eluru.
- 4 The Mandal Revenue Officer, Palakoderu mandal, Palakoderu, West
Godavari District.
- 5 P. Veera Venkata Satyanarayana Raju, S/o. Satyanarayana Raju, R/o.
Narasayya Agraharam, Bhimavaram, West Godavari District.

S. Subba

RR 3 & 4 AND 5 are impleaded as per C.O. dt.23.10.2017 in
WPMP.NOs.42330 of 2017 and 43031 of 2017 respectively.

.....RESPONDENTS

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 of Mandamus or any other appropriate Writ or Writs,
Order or Direction, declaring proceedings for demolition and eviction issued by
the 2nd Respondent in No.153M, dt.27-09-2019, received on 29-09-2017 under
Land Encroachment Act, 1905 as illegal, arbitrary, without jurisdiction and
violative of Art. 14 & 300-A of Constitution of India and ultra vires Sec. 6 of Land
Encroachment Act 1905, Award costs.

WPMP NO. 41730 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to stay all further proceedings issued by the 2nd Respondent order in the form of notice No.153M, dt.27-09-2019, pending disposal of W.P.No. /2017 and pass appropriate orders thereon.

Counsel for the Petitioner: SRI S.S. REDDY

Counsel for Respondent Nos.1 & 2: GP FOR IRRIGATION & C.A.D. (AP)

Counsel for Respondent Nos.3 & 4: GP FOR REVENUE (AP)

Counsel for Respondent No.5: SRI CH. DHANAMJAYA

The Court made the following: ORDER

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.33547 OF 2017

ORDER

Heard learned counsel appearing for the petitioner, learned Government Pleader for Irrigation and learned counsel appearing for the 5th respondent.

It is the case of the petitioner that his daughter gifted an extent of Ac.3.75 cents in Sy.No.369 to her brother, who is the 2nd petitioner, through a registered settlement deed dated 18.6.2014. The 2nd petitioner already owns another extent of Ac.3-75 cents of land in the same Sy.No.369. Hence, the 2nd respondent became the owner of total extent of Ac.7-50 cents. When the 2nd respondent passed an order on 27.09.2017 under Section 6 of the Land Encroachment Act, 1905 (for short 'the Act'), asking the 1st petitioner to remove the encroachment over an extent of Ac.0-50 cents of land in Sy.No.370, which was shown as drainage poramboke, and is adjoining the land of the 2nd petitioner situated in Sy.No.369, the present writ petition is filed.

Learned counsel appearing for the petitioners submits that the 2nd respondent has no jurisdiction to issue the impugned notice under Section 6 of the Act and in any event the impugned

notice should be preceded by a notice under Section 7 of the Act. He further submits that drain which is flowing, is common drainage for the village and the 2nd petitioner has not encroached the land as alleged.

The 2nd respondent lacks jurisdiction, which is admitted by the learned Government Pleader as well as by the 5th respondent.

In the circumstances, since the impugned notice was issued by an authority, who is not competent to issue the same, the impugned notice dated 27.09.2017 is set aside and the writ petition is allowed accordingly. However, this order will not prevent the competent authority to take action in accordance with law. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

SD/-N. PURUSHOTHAM REDDY
ASSISTANT REGISTRAR

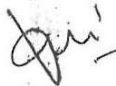
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SECTION OFFICER

To

1. The Principal Secretary, Minor, Medium & Major irrigation Department, State of Andhra Pradesh, Building No.4, Ground floor, Room.No.216, A.P. Secretariat, Velagapudi, Krishna District.
2. The Deputy Executive Engineer, Drainage Sub Division, Bhimavaram, West Godavari District.
3. The District Collector, West Godavari District, Eluru.
4. The Mahdal Revenue Officer, Palakoderu mandal, Palakoderu, West Godavari District.
5. Two CCs to the GP for Revenue (AP), High Court of Judicature at Hyderabad (OUT)
6. Two CCs to the GP for Irrigation & C.A.D. (AP), High Court of Judicature at Hyderabad (OUT)
7. One cc to Sri. S.S. Reddy, Advocate (OPUC)
8. One cc to Sri. Ch. Dhanamjaya, Advocate (OPUC)
9. Two CD Copies

GLM



HIGH COURT

ARLR,J

²³
DATED: 02/10/2017

ORDER

WP.No.33547 of 2017

ORC N/A
Cyp/100 Dist Col
Duf

ALLOWING THE WP
WITHOUT COSTS.

ssv
12 copies
Dt 15/11/2017

11

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
THURSDAY, THE FOURTH DAY OF DECEMBER
TWO THOUSAND AND FOURTEEN

PRESENT:
THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
WP NO:37216 of 2014

Between:

- 1 Nallamala John, S/o. Devadanam,
- 2 Asodi Subbaravamma, W/o. Swami Reddy,
- 3 Gujjula Venkateswaramma, W/o. Srinivasa Reddy,
- 4 Bathula Bharathi, W/o. Ramakrishna,
- 5 Bonumukkala Bharathi, W/o. Yenu Gopal Reddy,
- 6 Sriramula Krishnaveni, W/o. Venkateswarulu,
- 7 Jagannadham Pedda Srinu, S/o. Venkateswarulu,
- 8 Madduluri Ravanamma, W/o. Nageswara Rao,

..... Petitioners

AND

- 1 The State of Andhra Pradesh, rep. by its Principal Secretary, Irrigation Department, Secretariat, Hyderabad.
- 2 The District Collector (Irrigation), Prakasam District, Ongole
- 3 The Chief Executive Engineer (Irrigation), Nagarjuna Sagar Project, Koppolu, Prakasam District.
- 4 The Assistant Executive Engineer, NSJC, (Irrigation) O&M, Section, Pelluru-2, Pelluru Village, Ongole Mandal, Prakasam District
- 5 The Tahsildar, Santhanuthalapadu Mandal, Prakasam District

..... Respondents

Petition under Article 226 of the Constitution of India, praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to issue order or direction more particularly one in the nature of Writ of Mandamus declaring the highhanded action of the 4th respondent in attempting to demolish the petitioners houses situated in Sy. Nos. 151 and 152, Pernamitta Village (presently within the limits of Ongole Municipal Corporation), S N Padu Mandal, Prakasam District without any authority of law and without enquiry is illegal, arbitrary and consequently direct the respondents 2 and 3 to take appropriate action on the representation dated 21.11.2014.

The petition coming on for hearing, upon perusing the petition and the affidavit filed herein and upon hearing the arguments of Sri I.Koti Reddy, Advocate for the Petitioner of the Asst. G.P. for Irrigation, (AP) for the Respondents, the Court made the following.

ORDER:

"Learned Assistant Government Pleader for Irrigation (AP) takes notice for the respondents and seeks time for filing counter affidavit.

Post on 27-01-2015.

A perusal of the impugned notices shows that the same have been issued by the Assistant Executive engineer, NSJC, O & M Section, Pelluru. However, he has not referred to the provision of law under which he has exercised his power.

At the hearing, the learned Assistant Government Pleader has fairly conceded that under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, or

under the A.P. Land Encroachment Act, 1905, it is the Revenue Department which is empowered to issue the eviction notices.

As prima facie respondent No.4 has no jurisdiction to issue the impugned notices, the eviction of the petitioners is stayed, pending further orders."

Sd/- A.SURYAPRAKASH RAO
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To

1. The Principal Secretary, Irrigation Department, State of Andhra Pradesh, Secretariat, Hyderabad.
2. The District Collector (Irrigation), Prakasam District, Ongole
3. The Chief Executive Engineer (Irrigation), Nagarjuna Sagar Project, Koppolu, Prakasam District.
4. The Assistant Executive Engineer, NSJC, (Irrigation) O&M, Section, Pelluru-2, Pelluru Village, Ongole Mandal, Prakasam District
5. The Tahsildar, Santhanuthalapadu Mandal, Prakasam District. (Addressees 1 to 5 BY RPAD)
6. Two CCs to G.P. for Irrigation, (AP), High Court Buildings, Hyderabad (OUT)
7. one CC to Sri I.Koti Reddy, Advocate (OPUC)
8. One Spare Copy

WEDNESDAY, THE SEVENTEENth OCTOBER
TWO THOUSAND AND TWELVE

PRESENT

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO: 27809 OF 2012

Between:

Sri Mahaganapathi Kodandarama Swamivari Devasthanam, Jonnalagadda Village, Guntur Rural Mandal, Guntur District, Rep by the Chairman, Vanga Narayana Reddy, S/o.Chinnappa Reddy, Age 37 years, R/o.Jonnalagadda Post, Guntur Rural Mandal, Guntur District.

.....PETITIONER

AND

- 1 The Executive Engineer, Irrigation Guntur Division, Collectorate Road, Guntur.
- 2 The Deputy Executive Engineer, Guntur Sub-Division, Minor Irrigation Section, Collectorate Road, Guntur.
- 3 The Assistant Engineer, Minor Irrigation Section, Collectorate Road, Guntur.
- 4 The Panchayat Secretary, Jonnalagadda Panchayat, Guntur District.

.....RESPONDENTS

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 the order/s or writ/s one more particularly in the nature of Writ of Mandamus, declaring the proceedings letter No.27 M-dated 17/08/2012 issued by the 3rd respondent as illegal, arbitrary and unconstitutional and consequently set -aside the proceedings letter No. 27M dated 17/08/2012 issued by the 3rd respondent and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

WPMP NO. 35404 OF 2012

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to stay all further proceedings pursuant to the proceedings letter no. 27 M dated 17/08/2012 issued by the 3rd respondent pending disposal of this writ petition.

Counsel for the Petitioner : Sri.Syed Khader Mastan

Counsel for Respondent Nos.1 to 3 : AGP For Irrigation & Comm Area Dev

Counsel for Respondent No.4 : None Appeared

The Court made the following Order :-

ORDER:

This Writ Petition is filed for a mandamus to set-aside letter No.27-M, dated 17-8-2012, of respondent No.3 whereby the petitioner was asked to remove the unauthorized structures raised over the land which purportedly belongs to the Irrigation Department.

The petitioner has tried to trace its right to the land in question to resolution dated 31-3-2011 stated to have been passed by the Jonnalagadda Gram Panchayat. The petitioner also submitted that respondent No.3 has no power or jurisdiction to issue the impugned notice.

A counter-affidavit is filed on behalf of respondent Nos.1 to wherein it is inter alia stated that the land over which the petitioner seeking to raise construction belongs to the Irrigation Department that the same is in unauthorized occupation. It is further stated that 13-8-2009, the then Mandal Revenue Officer has removed encroachments on the instructions from the District Water Committee and the petitioner was warned not to make any construction over the tank bund and its surrounding land. It is further averred that District Panchayat Officer issued letter dated 19-7-2012 directed initiation of appropriate action against the encroachers; that according to respondent Nos.1 to 4 inspected the encroached site on 2-8-2012 and instructed the temple management to remove all the illegal constructions by 5-8-2012 and that thereafter respondent No.3 has issued the impugned letter. The counter-affidavit denied any right of the petitioner.

- To
- 1.
 - 2.
 - 3.
 - 4.
 - 5.
 - 6.
 - 7.

-154-

to be in possession of the land under the resolution of the Gram Panchayat which has merely conveyed 'no objection' for the former to enjoy the property.

As regards the resolution of the Gram Panchayat, it is not the pleaded case of the petitioner that the land in question is vested in the Gram Panchayat. The said resolution has only conveyed 'no objection' for the land to be given to the petitioner and a copy of the same was sent to the Tahsildar, Guntur Rural, with a request to him to take necessary steps accordingly. If the land is vested in the Irrigation Department, it is not permissible for the Gram Panchayat or the Tahsildar to give away the same to the petitioner. The petitioner has therefore not established any legal right over the property in question.

With regard to the power of respondent No.3 to issue the impugned notice, in my opinion, no such power inheres in him to evict a person in unauthorized occupation of the public property. Respondent No.3 can only approach the Tahsildar concerned for initiation of proceedings under the A.P. Land Encroachment Act, 1905.

Accordingly, subject to the right of respondent Nos.1 to 3 to evict the petitioner from the land in question by following the due procedure of law, the Writ Petition is disposed of.

As a sequel, interim order dated 5-9-2012 is vacated and WPMP No.35404/2012 is disposed of as infructuous.

SD/-B.BALAVENKAT REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Executive Engineer, Irrigation Guntur Division, Collectorate Road, Guntur.
2. The Deputy Executive Engineer, Guntur Sub-Division, Minor Irrigation Section, Collectorate Road, Guntur.
3. The Assistant Engineer, Minor Irrigation Section, Collectorate Road, Guntur.
4. The Panchayat Secretary, Jonnalagadda Panchayat, Guntur District.
5. Two CCs to G.P. For Irrigation & Comm Area Dev, High Court of Andhra Pradesh, Hyderabad (OUT)
6. One CC to Sri.Syed Khader Mastan, Advocate (OPUC)
7. Two C.D. Copies

SA

HIGH COURT
DATED: 15/10/2012

ORDER
WP.NO.27809 OF 2012

DISPOSING OF THE W.P
WITHOUT COSTS.

Enclt No: DEE/GSO/GNT 158 Dt.
copy forwarded to A.E/H2 Section, G
for information and necessary action.

18PDJ
9
31/10/12


DY. EXECUTIVE ENGINEER
GUNTUR SUB-DIVISION
GUNTUR

6/11/12

5/2/2018

Mail from DCE, NABARD

31/1/18 12:19 PM.

Office of the Chief Engineer (R&B), NABARD, RDF, LWE & AIIB,
Andhra Pradesh :: M.G. Road, Labbipet, Vijayawada - 520 010

29/1
2/2/18

Circular Memo No: (R&B) / Rural Roads/ General/ DCE (RR)/ DEE-III/ AE-4/ 2018,

Dated: 30-01-2018

Sub: (R&B) Department - Removal of encroachments under A.P. Land
Encroachment Act 1905 - Registration of FIRs against the (R&B)
authorities - Certain instructions issued - Regarding

Ref: Government Pleader for (R&B) Department, High Court of
Hyderabad, Letter Dated: 19-01-2018

All the Superintending Engineer (R&B), are informed that the
Government Pleader for (R&B) Department, vide reference cited, has issued
certain guidelines to be followed in case of encroachment removals. A copy of
the reference cited is enclosed herewith.

Hence all the Superintending Engineers are requested to follow these
instructions scrupulously and issue necessary instructions to the officers
under their respective jurisdictions for urgent necessary action.

Encl: Copy of reference cited

for Chief Engineer (R&B),
NABARD, RDF, LWE & AIIB

To,
The Superintending Engineer (R&B),

1. Srikakulam
2. Vizianagaram
3. Visakhapatnam
4. Kakinada
5. Eluru
6. Vijayawada
7. Guntur
8. Ongole
9. Nellore
10. Chittoor
11. Kadapa
12. Anantapur
13. Kurnool

Encl No: 3915/2017: dt: 5/2/18

Copy Communicated to the all
DEE's in this division are requested
to submit the above instructions
under their respective jurisdictions
for urgent necessary action.

EXECUTIVE ENGINEER (R&B),
West Godavari Division, ELURU

PA. to EXECUTIVE ENGINEER (R&B)

Suptd
Communicated to all
AE/DEEs & DEEs
1/2/18

To
The DEE
(R&B) Sub-dv
No. II, Eluru

Dt: 19.01.2018

From:

Bokka Satyanarayana,
Govt. Pleader for R & B Dept.
High Court of Hyderabad.
Cell.No.9440126621

To:

1. The Principal Secretary to Govt.
Roads & Buildings Dept.,
Secretariat Buildings, Velagapudi,
Amaravathi, Guntur District.
2. The Engineer-in-Chief, (Admn)
Roads & Buildings Dept.,
Vijayawada, Krishna District.



Sir,

DCE (RR)

P1 Communicate
Copy to all SEs
for urgent
mta

22/1/18 -

unsub

DEE3
Pln Comm
Copy to all
SEs

22/1/18

AC4
22/1/18

I brought to the notice before the above authorities regarding the removal of encroachments under the A.P. Land Encroachment Act 1905 and Registration of FIRs against the R & B authorities by the Police and non co-operation from the Revenue Authorities. As per the A.P. Land Encroachment Act 1905 the Revenue authorities are only the competent authority to removal of encroachments and protecting the lands of the Government/ R & B Dept by following the due procedure as per the Act 1905. In several cases, entire State of A.P., without following the due procedure as per the Encroachment Act 1905 by the Revenue authorities, they are orally instructing the R & B authorities to remove the encroachments by providing Men & Machinery. Hence, the R & B Authorities are following the instructions of the Revenue authorities and participating the removal of encroachments without taking any proceedings regarding encroachments. At that stage, some of the cases before the Hon'ble Court alleging that the R & B authorities are removing the encroachments without issuing notices, even though Revenue Authorities are the competent to issue notice, but they kept silent and on filing the counters before the Hon'ble Court, stating that there is no involvement of the Revenue authorities. Due to the reason, the Hon'ble Court taking serious view against the R & B authorities and directing the Police to registering the FIR's against the R & B Dept Employees in W.P.No.2776/2017. Hence, I am requesting the R & B authorities without any proceedings from the Revenue Authorities/Municipal/Panchayat Raj as per the A.P. Land Encroachment Act 1905 to removal of Encroachments the R & B authorities need not be provide and need not be involve by providing Men & Machinery. In any case, Revenue authorities followed the procedure by issued proceedings regarding removal of Encroachments under the Encroachment Act 1905 also need not be provide any Men & Machinery due to the reason, the R & B Dept is not the competent authority to removal of encroachments as per the Act 1905 except addressing a letter before the Revenue authorities. In any case, as per the oral instructions or

without any proceedings of Revenue authorities or competent authorities / Panchayat Raj authorities / Municipal authorities, the R & B authorities may involve regarding demolition or dispossession for widening of the roads and protecting the lands of the R & B department, the R & B Department authorities may face the consequences before the Hon'ble Court including criminal prosecution. Hence, I am requesting Principal Secretary to Govt., R & B Dept & Engineer-in-Chief, Administration to issue circular or guidelines to the Department concerned to entire State of AP, without any proceedings from the Revenue Authorities / competent authority ^{in fact} by following procedure under A.P. Land Encroachment Act 1905 no need to participate the demolition activities for widening purpose. If any of the R & B Officer may involve as per the oral instructions of the Revenue/ Municipal & Panchayat Raj or without any proceedings as per A.P. Land Encroachment Act 1905 they may face consequences by individual before the Hon'ble Court they are personally responsible for their illegal activities as per the orders in W.P.No.2776/2017 and requesting the concerned to communicate all Superintending Engineers / Executive Engineers in State of A.P.

Hence information.

Govt. Pleader for R & B Dept

Copy to:

1. The Principal Secretary to Govt., Revenue Dept.,
A.P. Secretariat, Amaravathi, Velagapudi, Guntur District.
2. Engineer-in-Chief's - All Wings
3. All the Chief Engineers,
4. All Supdt. Engineers / Executive Engineers

GOVERNMENT OF ANDHRA PRADESH
OFFICE OF THE GOVT. PLEADERS,
HIGH COURT BUILDINGS, HYDERABAD

LT.No.OPN.No.1/MOOLA/WRD/HG/2018, Dt.23-01-2018

From
Moola Vijaya Bhaskar,
G.P. for I & CAD,
High Court at Hyderabad.

To
Sri M.Rambabu,
Deputy Executive Engineer
Drainage Sub Division,
Tadepalligudem

Sub:- Clarification/Opinion -WP.No.23133/2013 filed by S.Venkato Reddy,
Vanampalli, West Godavari Dist. -Reg

Ref:- 1. Your Lr. No.DEE/DSD/TPG/WP23133/2013 IM dt: 02-01-2018.
2. WP.No.23133/2013 judgement dt: 25-04-2017.

....

Perused the letter under reference and judgment of the Hon'ble High Court and connected records.

In the above writ petition the main grievance of the petitioner is that, no notice was issued to the petitioner. But He was allotted the Plot No.5 situated in R.S.1/1of Maruteru Village by the department. He filed WP.No.23133/13.

The Hon'ble Court order which reads as follows:

"The respondents are directed to issue a notice, if they intend to demolish the structure in the site in question, and follow due process of law. The petitioner is also at liberty to give reply to such notice, if he so desires. The respondents are directed not take any coercive steps for demolition till decision is taken on the basis of the reply so given by the petitioner after issuance of notice."

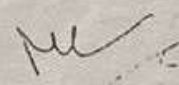
As per the directions of the Hon'ble Court the petitioner was given a Notice and Reply was received from him. After enquiry with local MRO, it is found that the patta produced by the petitioner is a fake one. Hence final action has to be taken in accordance with law.

There is no specific procedure prescribed in Irrigation law or any G.O for eviction of the unauthorised occupants. Hence, necessarily Irrigation department has to follow the Revenue Act and procedure laid down in Revenue Laws.

Hence, you are directed to ask the local MRO for the eviction and also from local police help to proceed with eviction process. You should record Panchanama etc as per Rules and follow the procedure.

As seen from the record, the petitioner again filed another WP.No.35400/2017 for direction from the Hon'ble Court. But no orders has been passed in that. There are no orders pending. Hence you can proceed with the eviction as per the Revenue Act with the help of local MRO and police.

Opinion accordingly answered.


Govt. Pleader for Water Resources

CASE DETAILS

PRIMARY DETAILS						
Main Number	WP 23133/2013		SR Number	WPSR 125454/2013		
Petitioner	Satthi Venkatreddy,		Respondent	Government of Andhra Pradesh,		
Petitioner Advocate	M V RAJA RAAM		Respondent Advocate	GP FOR IRRIGATION COMM AREA DEV		
Case Category	NON-SERVICE		District	WEST GODAVARI		
Filing Date	02/08/2013		Registration Date	02/08/2013		
Listing Date	20/04/2017		Case Status	DISPOSED		
Disposal Date	20-04-2017		Diposal Type	DISPOSED OF NO COSTS		
Purpose	ADMISSION (Irrigation and CAD)		Scrutiny Officer name			
Hon'ble Judges	The Honourable Sri Justice RAJA ELANGO					
Category						
Category	WP		Sub Category	IRRIGATION & COMMAND AREA		
Sub Sub Category	-					
IA DETAILS						
IA Number	Filing Date	Advocate Name	Misc.Paper Type	Status	Prayer	Order Date
IA 1/2013(WPMP 28397/2013)	02/08/2013	M V RAJA RAAM	Suspension Petition	Disposed	IA PRAYER	20/04/2017
USR Details						
USR Number	Advocate Name		USR Type	USR Filing Date		
1/2013	4222/M V RAJA RAAM		Affidavit	19/08/2013		-
2/2013	1991/GP FOR IRRIGATION & COMM AREA DEV		Counter Affidavit	20/12/2013		-
CONNECTED MATTERS						
Connected Case Number						
VAKALATH						
Advocate Code	Advocate Name			P/R No.	Remarks	
2008	GP FOR REVENUE			5(R)	----	
LOWER COURT DETAILS						
PRAYER						
<p>to issue a Writ or order or directions particularly in the nature of Writ of Mandamus call for the records in the impugned Notice No DEE/TPG/Camp No 3 Dt 1112013 of Respondent No 5 and thereby declare the action of the Respondents in interfering the Patta land of the Petitioner enoying the petitioner morethan 3 decades without opportunity or verifying the pattas as illegal arbitrary contrary to law violative of Art 14 21 300A of the Constitution of India and set aside the impugned notice dt 110 interest of justice</p>						
PETITIONER(S)						
S.No	Petitioner(S) Name					
1	Satthi Venkatreddy S/o Satthi Reddy aged 52 years R/o Venamapalli Hamlet of Neggipudi Penumarnta Mandal W G District					
RESPONDENT(S)						
R.No	Respondent(S) Name					
1	Government of Andhra Pradesh Rep by its Principal Secretary Irrigation Department Secretariat Hyderabad					
2	The District Collector Eluru W G District					
3	The Superintendent Engineer Irrigation Section Eluru W G dist					
4	Executive Engineer Irrigation Section Bhimavaram W G District					
5	Deputy Engineer Irrigation Section Tadepalligudem W G District					
6	The Tashildar Penumantra Penumantra Mandal W G Dist					
7	Gram Panchayat Marteru W G District rep by its Secretary					
ORDERS						
Order on	Judge Name	Date of Orders	Order Type	Order Details		

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.23133 of 2013

ORDER:

1. This writ petition is filed by the petitioner seeking to declare the action of the respondents in interfering with his patta land without following due process of law, as illegal and arbitrary.
2. It is the case of the petitioner that house site admeasuring 144 sq. yards in Plot No.5 situated in R.S.No.1/1 of Maruteru village was given to his father, vide allotment order dated 12.11.1983 and since then, the petitioner and his father are in continuous possession of the same. While so, the 5th respondent gave notice on 11.1.2013, for which the petitioner submitted his representation. But without considering the same, respondents Nos.3 to 5 gave a warning to the petitioner to remove his house. Hence, the present writ petition has been filed.
3. Heard and perused the material available on record.
4. On 20.8.2013, this Court passed interim order directing that no demolition of the structures shall be undertaken pursuant to the notice issued by the Assistant Executive Engineer, Drainage Section, Maruteru, West Godavari District.
5. The main grievance of the petitioner that notice was not served prior to taking action against the petitioner. Considering the facts and circumstances of the case and the grievance of the petitioner, without expressing any opinion on merits, this Court is inclined to pass the following order:

“The respondents are directed to issue a notice, if they intend to demolish the structures in the site in question, and

follow due process of law. The petitioner is also at liberty to give reply to such notice, if he so desires. The respondents are directed not to take any coercive steps for demolition till decision is taken on the basis of the reply so given by the petitioner after issuance of notice.”

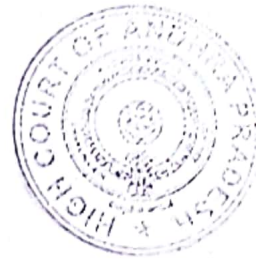
6. With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Date: 20th April, 2017
Nn

RAJA ELANGO, J



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



WEDNESDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 26850 OF 2018

Between:

Sri Shridi Sai Baba Charitable Trust, Kommuchikkala Village, Poduru Mandal, West Godavari District, Andhra Pradesh Rep. by its Managing Trustee Gunturi Venkata Satyanarayana

...PETITIONER

AND

1. State of Andhra Pradesh Rep. by its Principal Secretary, Irrigation Department, Secretariat, Velgapudi, Amaravathi, Guntur District.
2. The District Collector, West Godavari District.
3. The Superintending Engineer Irrigation Circle, Eluru, West Godavari District
4. The Assistant Engineer Irrigation Section, Marteru Penumantra Mandal West Godavari District.
5. Immalaraju Srinivasa Raju, S/o. I. Suryanarayana Raju, Aged 44 years R/o. K.Chikkala Village, Poduru Mandal, West Godavari District.

...RESPONDENTS

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 notice dated 25.07.2018 of the 4th respondent as illegal, arbitrary and violative of principles of natural justice and consequently set aside the same.

IA NO: 1 OF 2018

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 grant stay of all further proceedings pursuant to the Notice dated 25.07.2018 issued by the 4th respondent pending disposal of the writ petition.

IA NO: 2 OF 2018

Between:

1. State of Andhra Pradesh, Rep. by its Principal Secretary, Irrigation Department, Secretariat, Velgapudi, Amaravathi, Guntur District.
2. The Superintending Engineer Irrigation Circle, Eluru, West Godavari District
3. The Assistant Engineer Irrigation Section, Marteru Penumantra Mandal West Godavari District.

...Respondents/Petitioners

...Petitioner/ Respondent



AND

1. Sri Shiridi Sai Baba Charitable Trust, Kommuchikkala Village, Poduru Mandal. West Godavari District, Andhra Pradesh Rep. by its Managing Trustee Gunturi Venkata Satyanarayana

...Petitioners/Respondent

2. The District Collector, West Godavari District.
3. Immalaraju Srinivasa Raju, S/o. I. Suryanarayana Raju, Aged 44 years Rio. K.Chikkala Village, Poduru West Godavari District.
(R3 is not necessary party in this petition)

...Respondents/ Respondents

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 vacate the interim orders dated: 31-07-2018 passed in WP.No.26850 of 2018 and dismiss the writ petition with costs as there are no merits in it

Counsel for the Petitioner(s) : SRI. M/S INDUS LAW FIRM

Counsel for the Respondent Nos.1, 3 & 4 : GP FOR IRRI AND CAD

Counsel for the Respondent No.2 : GP FOR REVENUE

Counsel for the Respondent No.5 : NONE APPEARED

The Court made the following : ORDER

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No.26850 of 2018

ORDER:

This 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 notice dated 25.07.2018 of the 4th respondent as illegal, arbitrary and violative of principles of natural justice and consequently set aside the same and to pass such other order or orders"

2. Brief case of the petitioner is that the petitioner is a trust and donated a land to an extent of 0.48 cents of land in survey No.266/12 of Kommachikkala Village by way of registered deed vide Document No.13 of 2007 for construction of the temple. Accordingly, the petitioner constructed a temple in the year 2007. Since, then it has been in possession and enjoyment of the said temple. While so, the 4th respondent herein issued notice dated 09.06.2018 for removal of the encroachments. The said notice was challenged by the petitioner in Writ Petition No.124010 of 2018, wherein this Hon'ble Court vide order dated 12.07.2018 set aside the notice dated 06.07.2018 and the endorsement dated 04.07.2018, directing the petitioner to submit explanation to the notice dated 26.06.2018 and further directed the Tahsildar to

conduct survey for demarcation between private and government lands.

3. After passing the orders by this Hon'ble Court, the 4th respondents not intimated for conducting of survey. While things stood thus, the 4th respondent who is an Assistant Engineer issued another notice alleging that the petitioner encroached the property of the Government (Department of Irrigation). The said notice was impugned in the present Writ Petition on the ground that even though this Hon'ble Court directed the respondent authorities to follow the procedure and also directed to conduct survey for demarcation of the land of the petitioner as well as the Government land without doing so the impugned order came to be passed by the 4th respondent herein, which is in violation of the orders of this Hon'ble Court. Hence, the present notice is liable to be dismissed.

4. Heard the learned counsel for the petitioner, learned Government Pleader for Irrigation for respondent Nos.1, 3 and 4, learned Government Pleader for revenue for respondent No.2 and the learned counsel for respondent No.5.

5. Learned counsel for the petitioner further submits that after hearing both the learned counsel, this Hon'ble Court has passed interim order dated 31.07.2018, directing the respondents not to interfere with the possession of the petitioner's property.

6. On the other hand, the learned Government Pleader filed counter affidavit and vacate petition, wherein it is stated that the petitioner occupied four cents of canal bund panta bode, against which the present impugned notice was issued. Since, the petitioner is an encroacher, without submitting any explanation to the notice issued by the 4th respondent, approached this Hon'ble Court invoking jurisdiction under article 226 of the Constitution of India, which cannot be permitted and the Writ Petition is liable to be dismissed.

7. Having regard to the submissions made by both the learned counsel, the fact remains that the petitioner is a possessor and owner of Ac.0.48 cents in survey No.266/12 of Kommachikkala Village from 2007 and also constructed a temple which has been in possession and control of the petitioner's trust. If any encroachments are there, the respondents are conferred ample power to take action by following due process as contemplated under the Act. In earlier occasion, this Hon'ble Court in Writ Petition No.124010 of 2018 was pleased to pass an order dated 12.07.2018 in respect of the same property, the 2nd respondent therein who is Tahsildar specifically directed to follow certain procedure i.e., to conduct survey and demarcate the land between the petitioner as well as the respondents, but without doing so and without compliance of the orders of this Hon'ble

Court, the 4th respondent herein who is the Assistant Engineer cannot be permitted to issue such a impugned notice without following the procedure as directed by this Hon'ble Court.

8. For the reasons stated above and on perusal of the material on record, the respondents are hereby directed to comply the orders of this Hon'ble Court dated 12.07.2018 as mentioned above and after conducting joint survey as directed, if any encroachments are found within the premises of the petitioner, the respondents are at liberty to take appropriate action after following due process as contemplated under the Act and after providing opportunity of hearing to the petitioner. Moreover till the completion of the entire exercise as directed, the respondents are hereby restrained to interfere into the possession and enjoyment of the property of the petitioner.

9. With the above said direction, the Writ Petition is disposed of. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

//TRUE COPY//

SD/- K.J. RAJA BABU
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Principal Secretary, Irrigation Department, State of Andhra Pradesh Secretariat, Velgapudi, Amaravathi, Guntur District
2. The District Collector, West Godavari District.
3. The Superintending Engineer Irrigation Circle, Eluru. West Godavari District
4. The Assistant Engineer Irrigation Section, Marteru Penumantra Mandal West Godavari District.
5. One CC to SRI. M/S INDUS LAW FIRM Advocate [OPUC]
6. Two CCs to GP FOR IRRI AND CAD, High Court of Andhra Pradesh. [OUT]
7. Two CCs to GP FOR REVENUE, High Court of Andhra Pradesh. [OUT]
8. Two CD Copies

MSR

Bhargava

④

HIGH COURT

DATED:09/08/2023

ORDER

WP.No.26850 of 2018

11-Copies
PBK

21/9/2023

DISPOSING THE WP WITHOUT COSTS



Government of Andhra Pradesh
Water Resources Department

From
Sri/Smt. xxxxxxxx, B.E/M.E.,
Assistant Executive Engineer,
Irrigation Section,
TADEPALLIGUDEM.

To
The Tahsildar / Panchayat Secretary,
Tadepalligudem / Kothuru Village,
TADEPALLIGUDEM MANDAL.

Letter No.AEE/IS/TPG/ Dt.31-01-2024

Sir / Madam,

Sub:- Water Resources Department- W.G.District-Encroachments- Action against illegal encroachments and construction of concrete structures including houses and unauthorized plantation of trees on the Irrigation Canal Bund in Kothuru village limits - List of encroachers communicated -Removal of encroachments-Requested -Regarding.

Ref:- 1) Hon'ble High Court of Andhra Pradesh Court Order in W.P.No. 21406 of 2021 dated 05-10-2021
2) Letter No. AEE/IS/TPG/132N dated 22-04-2022
3) Govt. of Andhra Pradesh G.O.Ms.No 188 Dt. 21.07.2011

// please write the details about your case, like brief summary, reference of your previous communications, court judgments if any, etc., //

In this regard, it is submitted that this office is not competent and does not have any jurisdiction as per law with regards to removal of encroachments. As per law, the competent authority regarding eviction of encroachments is Panchayat Secretary and Revenue Authorities. The Hon'ble High Court of Andhra Pradesh dismissed the actions taken by the Irrigation Department officials on several instances, stating that irrigation department engineers are not competent and do not have powers, with regards to encroachments eviction on Canals, Drains, Tanks and other Irrigation lands. Hence, I invite your kind attention to the following provisions of Law and extracts of judgments passed by the Hon'ble High Court in this matter.

1) G.O.Ms No. 188, dated 21-07-2011 “ Rules relating to Andhra Pradesh Gram Panchayat (Protection of Property) Rules”

-In respect of category ‘C’ lands, the protection of such lands lies not only with Gram Panchayat but also with Revenue Department.

Note: As CI 2.1.iii of the G.O CATEGORY-C: VESTED WITH GRAM PANCHAYATS: all public water works, all public water courses, springs, Reservoirs, Tanks, Cisterns, Fountains, Wells, Stand pipes and other water works (as per section 80 of Andhra Pradesh Panchayat Raj Act) Minor Irrigation Tanks, Tank bunds and all **water bodies and vested poramboke.**

2) Judgment of Hon'ble High Court of Andhra Pradesh in W.P.No. 27809 of 2012

-“ With regard to the Power of respondent No.3 (Assistant Engineer, Irrigation) to issue the impugned notice, in my opinion, no such power inheres in him to evict a person in unauthorized occupation of the public property. Respondent No.3 (Assistant Engineer), Irrigation) can only approach the Tahsildar concerned for intimation of proceedings under the A.P. Land Encroachment Act, 1905”.

3) Judgment of Hon'ble High Court of Andhra Pradesh in W.P.No.33547 of 2017 regarding the encroachment eviction proceedings issued by Deputy Executive Engineer, Drainage Sub Division; Bhimavaram with regarding drainage poramboke land.

-“Since the impugned notice was issued by an authority (Deputy Executive Engineer, Drainage Sub Division, Bhimavaram), who is not competent to issue the same, the impugned notice dated 27-09-2017 is set aside”.

4) Judgment of Hon'ble High Court of Andhra Pradesh in W.P.No. 37216 of 2014

-“As prima facie respondent No. 4 (Assistant Executive Engineer, NSJC, O&M Section, Pelluru) has no jurisdiction to issue the impugned notices, the eviction of the petitioners is stayed, pending further orders. ” etc.,

As seen from the above, it is evident that this department is not the competent authority for eviction of encroachments though the land belongs to the department, since the powers are vested with Revenue and Gram Panchayat officials. However, we extended our Co-operation and Support with the empowered departments in carrying out eviction of encroachments in irrigation lands.

Hence, the Tahsildar Tadepalligudem Mandal/ Panchayat Secretary, Kothuru Village, Tadepalligudem Mandal is requested to initiate the eviction of the encroachments on the Irrigation Canal Bund in Kothuru village limits, duly following the process as contemplated under the Act to avoid the further legal complication.

Encl: 1. List of Encroachers 4 pages

Yours Sincerely,

XXXXXXXXX

Assistant Executive Engineer,
Irrigation Section, Tadepalligudem.

Copy submitted to the Deputy Executive Engineer, Irrigation Sub Division, Tadepalligudem for favour of information and taking further necessary action.

Assistant Executive Engineer,
Irrigation Section, Tadepalligudem