



**HIGH COURT OF ANDHRA PRADESH**

FRIDAY ,THE EIGHTH DAY OF MAY

TWO THOUSAND AND TWENTY

**PRESENT**

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**WRIT PETITION NO: 6310 OF 2020**

**Between:**

1. V.Srinivas Chowdary, s/o Krishnama Naidu, aged 56 years, r/o D.No.4-46, Jandra Street, Penumuru, Chittoor District.
2. P.Pradeep, s/o P.Hemadri Naidu, aged 29 years, r/o D.No.7-99, Lakshmi Nagar Colony, Penumuru, Chittoor District.
3. N.Chandrasekhar Naidu, s/o Doraswamy Naidu, aged 58 years, r/o D.No.1-1, K.C.Palli, Uppilipalli, Penumuru, Chittoor District.
4. M.Dhana Lakshmi, w/o M.Raja Gopal, aged 57 years, r/o D.No.22-78, A.B.Colony, Penumuru, Chittoor District.
5. P.Rani Ranemma, w/o P.Munikrishnama Naidu, aged 55 years, r/o D.No.1-68, Bazaar Veedhi, Penumuru, Chittoor District.
6. M.Syamala, w/o M.Subramanyam, aged 46 years, r/o D.No.88-4, Gandhinagar, Penumuru, Chittoor District.
7. P.Jaya Kumar, S/O Munaswamy Naidu, aged 49 years, r/o Lakshmi Nagar Main Road, Penumuru, Chittoor District.
8. V.Balaji Naidu Chengama Naidu, aged 46 years, r/o Gobbilamitta village, Penumuru Post, Chittoor District.
9. N.Ramamurthy, s/o N.Munaswamy Naidu, aged 43 years, r/o D.No.33-54A, K.C.Palli Gram Panchayat, Ontillu village, Penumuru Mandal, Chittoor District.

**...PETITIONER(S)**

**AND:**

1. The State of Andhra Pradesh Rep. by its Principal Secretary, Department of Panchayat Raj and Rural Development, Secretariat, Velagapudi, Amaravathi.
10. The District Collector, Chittoor District.
11. The Tahsildar, Penumuru Mandal, Chittoor District.
12. The District Panchayat Officer, Chittoor, Chittoor District.
13. The Gram Panchayat, Penumuru village and Mandal, Rep. by its Secretary, Penumuru, Chittoor District.

**...RESPONDENTS**

**Counsel for the Petitioner(s): S PRANATHI**

**Counsel for the Respondents: GP FOR PANCHAYAT RAJ RURAL DEV (AP)**

**The Court made the following: ORDER**



**\* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**+ W.P. No.6310 of 2020**

**% 08.05.2020**

**Between:**

V.Srinivas Chowdary,  
S/o. Krishnama Naidu, aged 56 years  
R/o. D.No.4-46, Jandra Street,  
Penumuru, Chittoor District,  
and eight others

.... Petitioners

AND

State of Andhra Pradesh,  
Rep. by its Principal Secretary  
Department of Panchayat Raj and Rural Development,  
Secretariat, Velagapudi, Amaravati  
and four others

.... Respondents

**! Counsel for Petitioners** : Smt. S.Pranathi

**^ Counsel for Respondents 1 & 4** : learned Government Pleader for  
Panchayat Raj

**^ Counsel for Respondents 2 & 3** : learned Government Pleader for  
Revenue

**^ Counsel for Respondent No.5** : Sri V.Vinod K Reddy

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) 2010 (4) ALD 476 = MANU/AP/0397/2010
- 2) 2018 (3) ALD 72 = MANU/AP/0078/2018
- 3) 2005 (6) ALD 19 = MANU/AP/0517/2005
- 4) AIR 2011 SC 1123 = MANU/SC/0078/2011

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****WRIT PETITION No.6310 of 2020****ORDER:**

The petitioners seek a Writ of *Mandamus* to declare the action of 5<sup>th</sup> respondent in trying to dispossess the petitioners from their shops in S.No.482 of Penumuru village and Mandal, Chittoor District by issuing final notice vide letter No.GP/01/2020 dated 28.02.2020 as illegal, arbitrary, violative of the provisions of A.P Panchayat Raj Act, 1994 (for short “**PR Act**”) and against the principles of natural justice and for a consequential direction to the respondents not to interfere with the possession of the petitioners over the tin sheeted shops in S.No.482 of Penumuru village and Mandal.

2. The petitioners’ case is thus:

a) The petitioners are residents of Penumuru village and they are running small shops for their livelihood by raising tin sheds in S.No.482 of Penumuru village. They raised the tin sheds with the permission of 5<sup>th</sup> respondent as the 5<sup>th</sup> respondent has been raising demand notices for their shops every year and the petitioners have been paying taxes without any delay or default. However, with the change in Government in the State of A.P, at the behest of local political leaders, the 5<sup>th</sup> respondent is trying to evict the petitioners from their sheds. Since June, 2019 the 5<sup>th</sup> respondent has not been issuing any demand notices for payment of tax to their sheds for the reasons best known to him.



b) There is a bus stop in the village and around the bus stop, several individuals including the petitioners raised tin sheet shops and have been running them since several years. Earlier when the respondents tried to dispossess the petitioners, they filed W.P.No.13281 of 2019 and this Court in its order dated 06.09.2019 directed the Gram Panchayat to follow due process of law for initiating any action against the petitioners. In spite of the said order, the respondents continue to threaten the petitioners to remove the shops though the petitioners are not encroachers of the site in S.No.482. Therefore, the petitioners were constrained to file another W.P.No.2349 of 2020 and this Court once again vide its order dated 03.02.2020 directed the respondents not to interfere with the possession of the petitioners without following due process of law.

c) Thereafter the 5<sup>th</sup> respondent issued the impugned show cause notice dated 01.02.2020 (received by the petitioners on 04.02.2020) seeking explanation from the petitioners as to why the petitioners have constructed ACC roofed sheds without permission from the Gram Panchayat. It was also alleged that the petitioners have not paid taxes and they sublet the shops to 3<sup>rd</sup> parties. It was mentioned that the said land was required for construction of shopping complex and funds were already released for that purpose. The petitioners submitted their replies dated 12.02.2020 stating that they are not encroachers of the subject land and they raised tin sheds with the permission of the Gram Panchayat and they are in permissive



possession of the 5<sup>th</sup> respondent. Since 5<sup>th</sup> respondent permitted them to raise shops, the electricity department too issued the commercial electricity connections to their shops. The petitioners in their reply stated that they were ready to pay tax if demand notices were issued. They have denied the allegation that they leased out their shop to 3<sup>rd</sup> parties.

d) Further case of the petitioners is that without considering the replies submitted by the petitioners, the 5<sup>th</sup> respondent has issued final notice vide letter No.GP/01/2020 dated 28.02.2020 directing them to remove the shops raised by them within a period of seven days else the same would be removed without any further notice. The 5<sup>th</sup> respondent has not recorded any finding that the petitioners are encroachers and they raised sheds without the consent of the 5<sup>th</sup> respondent. Thus, the 5<sup>th</sup> respondent has not considered the explanations submitted by the petitioners in a proper perspective.

e) The respondents have not followed principles of natural justice inasmuch as the 5<sup>th</sup> respondent has not given the petitioners an opportunity of hearing before issuing final notice. The 5<sup>th</sup> respondent issued demand receipts for payment of tax till June, 2019 and taking licence fee of Rs.100/- per month. Though the respondents are aware of the fact that the petitioners are in permissive possession, they tried to dispossess them only with an ulterior motive. The petitioners are poor persons and if their sheds are removed, they will be put to severe loss and hardship. If the respondents treat the petitioners as



encroachers, notice ought to be given under A.P Land Encroachment Act and personal hearing of the petitioners would be necessary. The Panchayat Secretary is not entitled to issue notices in that regard, so the impugned notices are not legally tenable.

Hence, the writ petition.

3. The 5<sup>th</sup> respondent filed counter opposing the writ petition *interalia* contending thus:

a) The petitioners earlier filed W.P.No.13281 of 2019 without any cause of action and obtained orders to permit them to continue in the subject premises. The said writ petition was disposed of on 26.09.2019 directing the respondents to follow due process of law, in case they initiate any action against the petitioners. The petitioners filed another W.PNo.2349 of 2020 for the very same relief and this Court in its order dated 03.02.2020 directed the respondents to follow due process of law.

b) In terms of the above orders, the respondents issued notices on 01.02.2020 to the petitioners stating that no permission was granted by the Gram Panchayat for construction of ACC sheds; that Grama Sabha was conducted in the office of Gram Panchayat wherein few of them have voluntarily removed their sheds; that the petitioners have erected shops / tin sheets and gave them on sub-lease for higher amounts; that they failed to pay taxes to the Gram Panchayat and they irregularly constructed ACC sheds by causing so much of



inconvenience to the public at the bus stand; that the District Collector has granted necessary funds for construction of a shopping complex for the convenience of the public in the said site and required the petitioners to submit their explanation within seven days from the date of receipt of the notice.

c) The petitioners issued reply notice on 12.02.2020 stating that no demand notices were issued to them for payment of taxes; therefore, they were justified to withhold the payment of taxes and if demand notices are given, they are ready to pay the tax; they obtained permission from the Gram Panchayat to raise the shops; that an amount of Rs.150/- per shop is paid yearly towards licence fee; electricity connection was also granted by the electricity department; it is a good proposal to construct permanent rooms and petitioners may be allotted rooms in the complex on rental basis for three years without conducting any auction. They gave an undertaking to cooperate with the Panchayat if their demand for sanction of rooms is agreed.

d) The respondents examined the relevant material and found that the encroachments made by the petitioners are illegal and that the petitioners have not remitted the taxes regularly to the Gram Panchayat. Except filing electricity bills, the petitioners failed to file any documents in support of their claim that permission was granted by the Gram Panchayat. Those documents do not confer any right over the said land and having been not satisfied with the explanation



and having found that the encroachment was illegal, a final notice dated 28.02.2020 was issued to the petitioners.

e) The land at the bus stand belongs to the Government and no permission was granted by the Gram Panchayat to take up any construction. As the land belongs to the Government, in order to develop the same and to generate income for the Gram Panchayat to augment its resources, the Gram Panchayat proposed to construct a shopping complex in the land. The District Collector has also granted funds of Rs.84,00,000/- for construction of shopping complex.

f) Initially, there were 26 shops in the said land at the time of filing of W.P.No.13281 of 2019. The said writ petition was filed by 14 petitioners and the second W.P.No.2349 of 2020 was filed by 9 petitioners. The present writ petition is filed by 9 individuals seeking allotment of shops on rent for three years without auction. The said request of the petitioners cannot be considered, as there is no procedure contemplated under law to allot shop without auction. Allowing such request would amount to violation of A.P Encroachment Act and Article 14 of Constitution of India besides effecting public exchequer.

g) The petitioners are highly rich and influential and none of them fall below the poverty line. None of the shop rooms are in their possession, as they subleased to third parties on collection of high rents. The petitioners have not produced any record to show that they obtained permission from the Gram Panchayat for raising sheds. The





7<sup>th</sup> petitioner owns a palatial house and he is doing private finance. The 2<sup>nd</sup> petitioner owns G+2 residence and his mother is a Government teacher. The 3<sup>rd</sup> petitioner owns G+1 residence and let out the shops on rent. The 4<sup>th</sup> petitioner is a businessman owning G+1 residence and his wife is a mid-day meals contractor. Thus, none of the petitioners is poor and their statement that they were poor is false. Hence, the writ petition may be dismissed.

4. Heard Smt.S.Pranathi, learned counsel for the petitioners and learned Government Pleader for Panchayat Raj, representing respondents 1 & 4; learned Government Pleader for Revenue, representing respondents 2 & 3 and Sri V.Vinod K.Reddy, learned Standing for the 5<sup>th</sup> respondent.

5. The main plank of argument of learned counsel for the petitioners is that the petitioners are not encroachers and they are licencees and with the permission of the Gram Panchayat they raised temporary sheds and doing petty business. They have been paying taxes to the Gram Panchayat and recently from the year 2019, the Gram Panchayat stopped demanding taxes from the petitioners and now all of a sudden the Gram Panchayat is trying to unlawfully dispossess them from the petition mentioned shop room sites. Learned counsel vehemently argued that if the Gram Panchayat treat them as encroachers, it has to follow due process of law for their eviction as contemplated under A.P Land Encroachment Act, 1905 by



issuing notice under the provisions of the said Act. In such an event the Panchayat Secretary is not competent to issue notices and the Revenue Department alone has to issue notices and take action. Further, the petitioners must be afforded an opportunity to submit their case and then only, eviction can be taken up. Since such a procedure is not followed and as the Panchayat Secretary of 5<sup>th</sup> respondent himself has issued notices, that too without mentioning the provision of law under which notices were issued, the action initiated by the 5<sup>th</sup> respondent is legally unsustainable. Learned counsel further argued that on previous occasions when the 5<sup>th</sup> respondent resorted to dispossess the petitioners illegally, this Court intervened and directed the respondents to follow due process of law. However, the 5<sup>th</sup> respondent has not followed the due process of law and therefore, the action initiated is unsustainable. She thus prayed to allow the writ petition.

6. Per contra, Sri V.Vinod K.Reddy, learned standing counsel for 5<sup>th</sup> respondent would strenuously argue that the land in the vicinity of bus stand of Penumuru village belongs to the Gram Panchayat. The petitioners and others were initially doing petty business by paying tax to the land occupied by them. In due course of time without the permission or sanction by the Gram Panchayat, they have illegally constructed sheds for their businesses and some of the petitioners have sub-leased their shops to third parties for higher rents. He would



submit that in order to augment the income of Gram Panchayat, the District Collector, Chittoor sanctioned Rs.84,00,000/- for construction of shopping complex in the place belonging to the Gram Panchayat. Thereupon, the Gram Panchayat proposed to remove the encroachments caused by the illegal construction of the sheds etc. by the petitioners and to construct shopping complex in that vicinity. Most of the persons who are running shops have voluntarily removed the shops to enable the Gram Panchayat to construct the shopping complex. However, the petitioners who sub-leased the shopping places and sheds, have resorted to the Court. Learned Standing Counsel would vehemently argue that the petitioners are not the petty vendors and poor people as pleaded but they own substantial properties and they are rich and influential people. They sub-leased their shops to 3<sup>rd</sup> parties and getting high income in the form of rents. They are living in palatial houses and doing private finance and other businesses. Since the petitioners have not cooperated with the Gram Panchayat, its Secretary was constrained to issue show cause notice initially and since the explanation submitted by the petitioners was not legally tenable, issued final notice directing the petitioners to vacate the premises. He would submit that Gram Panchayat is the owner of the public roads and its abutting canals, pipelines and other landed property under Section 53 of PR Act and it can take eviction proceedings under Section 98 of PR Act and also under A.P Gram Panchayat (Protection of Property) Rules, 2011. He would



vehemently argue that the petitioners cannot question the authority of Panchayat Secretary to issue notices both show cause and final. He therefore, prayed to dismiss the writ petition.

7. The point for consideration is, whether are merits in this writ petition to allow?

8. **POINT:**

The facts undisputed, which can be culled out from the respective pleadings and arguments are that the open land in the vicinity of bus stand of Penumuru village belongs to 5<sup>th</sup> respondent - Gram Panchayat. The petitioners initially occupied small parcels of the land obviously to do petty business in the bus stand area and later they constructed the sheds. The bone of contention is with regard to construction of those sheds. While the petitioners claim that they have raised tin sheeted and ACC sheeted sheds with the permission of the Gram Panchayat and paying taxes to it till recently, in contrast the 5<sup>th</sup> respondent would contend that neither the petitioners applied for any permission nor the Gram Panchayat accorded permission for raising such sheds and therefore, the structures wherein the petitioners are running business are only illegal constructions. As rightly argued by learned standing counsel, the petitioners have not produced any material before this Court showing that they have applied for permission to raise either ACC structures or other structures and that the Gram Panchayat accorded permission to any of the writ



petitioners. Therefore, the contention of S.Pranathi, learned counsel for the petitioners that the structures were authorized constructions cannot be countenanced.

**9.** Earlier some of the present writ petitioners and others filed W.P.No.13821 of 2019 alleging that the 5<sup>th</sup> respondent authorities were interfering with their possession and enjoyment of their shops and trying to evict them by demolishing their shops. This Court in its order dated 26.09.2019 directed the Gram Panchayat to follow due process of law in case they initiate any action against the petitioners. A similar order was also passed in subsequent W.P.No.2349 of 2020.

**10.** Be that it may, the Secretary of 5<sup>th</sup> respondent-Gram Panchayat served show cause notices to the petitioners and their ilk on 01.02.2020 pursuant to the order in W.P.No.13281 of 2019. In the said notice, it is alleged that the Gram Panchayat has not issued any permission for ACC sheds constructed by the petitioners. The petitioners have paid tax for the vacant land for the financial year 2017-2018 only. It is further alleged that the petitioners have sub-leased their shops and when a Gram Sabha was conducted in that regard, some of the vendors have voluntarily removed their sheds. It is further alleged that due to irregular and illegal construction of ACC sheds severe inconvenience is being caused to the public and the District Collector has sanctioned funds for construction of permanent shopping complex in that area. Thus, the Panchayat Secretary directed



the petitioners to show cause within 7 days as to why ACC sheds were constructed by the petitioners without any permission.

**11.** It appears that the petitioners have submitted their individual explanations claiming that they have been regularly paying the taxes and they have raised constructions with the permission of the Gram Panchayat and they are paying taxes at the rate of Rs.150/- per year. They claimed that the electricity was provided to their shops only on the permission given by the Gram Panchayat. While welcoming the proposal to construct permanent shopping complex, the petitioners demanded an assurance from the Gram Panchayat that for three years they will provide shops on rental basis without conducting public auction.

**12.** Having been not satisfied with their explanation, the Panchayat Secretary issued final notice directing the petitioners to remove the ACC sheeted shops constructed by them within 7 days.

**13.** As already stated supra, learned counsel for the petitioners questioned the authority of Panchayat Secretary to serve the notices. It is her argument that the petitioners are not encroachers and if the Gram Panchayat treats them as encroachers, action shall be initiated only under A.P Land Encroachment Act and notices should be served by the concerned Tahsildar. I am afraid this argument has no much force as the law on this aspect is no more *res integra*.



**14.** Section 53 of PR Act lays down that all public roads in the village other than National Highways, State Highways and roads vesting in Zilla Parashid or Mandal Parashid, vest in the Gram Panchayat together with all pavements, stones and other materials thereof, all works, materials and other things provided therefore, all sewers, drains, drainage works, tunnels and culverts in along side or under such roads and all works, materials and things appertaining thereto. The proviso to this section says that the Gram Panchayat shall take steps to remove the encroachments and prevent unauthorized use of any road other than National Highway passing through the Gram Panchayat.

**15.** Then Section 98 deals with removal of encroachments. It lays down that the executive authority of Gram Panchayat by notice require the owner or occupier of any building to remove or alter any projection, encroachment or obstruction other than a door, gate, bar or ground floor window situated against or in front of such building and in or over any public road vested in such Gram Panchayat. In case the owner or occupier of the building proves that such projection, encroachment or obstruction has been in existence beyond the period of limitation and gives him a prescriptive title thereto or that it was erected with the permission or licence of any local authority and the period of permission has not expired, the Gram Panchayat shall make a reasonable compensation to him.



16. Thus, a conjunctive study of Section 53 and 98 gives us an understanding that in respect of encroachments made over public roads, the executive authority of the Gram Panchayat has power to remove such encroachments. This power has been upheld in a number of judicial pronouncements. In *Karanam Manjunath Vs. District Collector*<sup>1</sup>, the facts are that the petitioners 6 in number were conducting petty business like running tailoring shop, beedi shop, vegetable shop, cycle repairs shop etc., as their predecessors occupied a portion of Gram Panchayat road in the village and constructed small bunks / kiosks. Electricity connection was also obtained by them for their shops and they were paying ground rents to Gram Panchayat. Ultimately, the Gram Panchayat issued notice to the petitioners therein to remove their bunks within a given time, lest they should be removed by the Gram Panchayat itself. Their main contention was that if their bunks were removed, they would suffer hardship and the Gram Panchayat having permitted them to set up the bunks and having accepted the ground rents cannot be permitted to remove the bunks. The notable fact in that case is that unlike in the present case, the petitioners therein have filed permission letters given by the Sarpanch of Gram Panchayat enabling the petitioners and their predecessors to raise temporary constructions for livelihood. In this background, a learned single Judge of the High Court of A.P while

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<sup>1</sup> 2010 (4) ALD 476 = MANU/AP/0397/2010





taking into consideration their contention about their right to carry business, held that no citizen can cause obstruction to the traffic or pedestrians because the road and pathways are essentially meant for to pass and re-pass and use for conveyance. He further held as follows:

“5. The right of petitioners to occupy Gram Panchayat road margin - even if it is with permission of the Panchayat - is subject to the right of users of the road. The roads are meant for passing and re-passing by the users and they are not meant for squatters to carry on business. Sections 98 and 99 of Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity) empower, nay, cast a duty on the Gram Panchayat to remove all the encroachments and keep the roads vested in Gram Panchayat under Section 53 of the Act free from encroachments. Section 98(2) of the Act speaks of prescriptive right of a person in occupation of Gram Panchayat land/road and even in such cases, the person squatting on the road margin does not get a right of occupation and if such prescriptive right is proved, he is only entitled for compensation. Therefore, the petitioners have no right to enforce by filing a Writ Petition.”

17. In *Koganti Venkata Suryanarayana Vs. State of A.P and others*<sup>2</sup>, a Writ Petition (PIL) was filed seeking Mandamus to declare the action of respondents 1 to 6 including Gram Panchayat in not initiating action for removing the illegal and unauthorized construction of compound walls and gates by the 7<sup>th</sup> respondent thereby closing public access to the roads in the layout plots. It is in that context the High Court of Judicature at Hyderabad while referring the provisions of Section 53 and 98 of PR Act held thus:

“15. In terms of Section 53(1) of the 1994 Act all public roads, within the territorial limits of a Gram Panchayat, are vested in it, and, in terms of

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<sup>2</sup> 2018 (3) ALD 72 = MANU/AP/0078/2018



Sections 98 and 101 thereof, the Gram Panchayat is obligated to remove encroachments, and prevent unauthorised use of any of the roads which belong to it. Neither was the 7<sup>th</sup> respondent accorded permission, either by the 5<sup>th</sup> respondent-Gram Panchayat or by the 4<sup>th</sup> respondent, to construct compound walls and erect gates, nor do the 1994 Act and the 2014 Act provide for any such permission to be granted. Construction of compound wall over 14 roads in the lay out, and erection of gates in the remaining six, all of which are meant to connect areas outside the lay out, has resulted in prohibition/restriction of the use of these roads, which belong to the 5<sup>th</sup> respondent-Gram Panchayat, by the public at large.”

**18.** In *Panchayat Secretary, Gram Panchayat and others Vs. Maddela Manikyamma and others*<sup>3</sup>, a learned single Judge of High Court of A.P. while discussing the issue whether the dispossession of respondent was in accordance with law or not, happened to scrutinize Section 53 and 98 of PR Act and held that the procedure followed in that case by the Gram Panchayat was in accordance with the aforesaid provisions.

**19.** It should be noted that the above jurimetrical jurisprudence expounder the public roads and their appurtenants vest with Gram Panchayat and it is obligated to remove any encroachments made thereon. No doubt, Section 53 and 98 and aforesaid decisions have not directly dealt with the encroachments into the other properties of Gram Panchayats and their removal, such as vacant sites, porambokes, village sites, burial grounds etc. However, in my view the ratio in the above decisions that the Gram Panchayat is obligated

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<sup>3</sup> 2005 (6) ALD 19 = MANU/AP/0517/2005



to remove encroachments on public roads vest in it can be applied to its other properties also, because public roads are one type of properties of Gram Panchayat.

20. Be that it may, clarifying the issue as to what action has to be initiated for removal of encroachments in respect of other properties of Gram Panchayat, Hon'ble Apex Court in *Jagpal Singh and Others Vs. State of Punjab and others*<sup>4</sup>, issued certain directions. In that case, the Apex Court was dealing with various types of common lands inherited to the villages, such as, Grama Sabha land, Gram Panchayat land (in north Indian States), Shamlat Deh (in Punjab), Mandaveli and poramboke lands (in south India), Kallam, Maidan etc. depending on the nature of the user. The Court observed that those public utility lands in the villages were for centuries used for the common benefit of the villagers of the village, such as, ponds for drinking and bathing, grazing grounds for cattle and for harvesting grain, Maidan for playing by the children, carnivals, circuses, Rama Leela etc. and those lands which stood vested through local laws in the State were handed over to the Gram Panchayats/Grama Sabhas for the management. They were generally treated as inalienable as their status as community land is preserved.

The Apex Court then expressed its concern that since independence in the large parts of the country, the common village

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<sup>4</sup> AIR 2011 SC 1123 = MANU/SC/0078/2011



land had been grabbed by unscrupulous persons using muscle power, money power or political clout and in many States now there is not an inch of such land left for the common use of the people of the village though it may exist on paper. People with power and pelf encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of village community. These observations were made in the context of holding that the appellants therein were trespassers who illegally encroached upon the Gram Panchayat land by using muscle power / money power and in collusion with the officials and even with the Gram Panchayat. While dismissing the appeal, the following directions are given by the Apex Court.

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”



21. In the backdrop of the above directions, the Government of A.P have, through G.O.Ms.No.188 Panchayat Raj and Rural Development (Pts.IV) Department dated 21.07.2011 notified the rules called “**A.P Grama Panchayats (Protection of Property) Rules, 2011**”. Rule 2 has classified the properties of Gram Panchayats into three categories i.e. Category-A : Owned and acquired properties; Category-B: Gifts, donations, transfer of lands to Gram Panchayats and Category-C: Properties vested with Gram Panchayats. Rule-4 is an important provision relating to eviction of encroachments. As per this rule, 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 and thereafter pass suitable orders. He may take necessary assistance from the police as per Section 139 of PR Act. Aggrieved parties may file representation to the Panchayat Secretary by marking a copy to the Divisional Panchayat Officer.

Rule – 5 says that a separate cell at District level in the office of District Panchayat Officer, by name Gram Panchayat (Protection of Properties) shall be constituted to monitor and protect Gram Panchayat properties from time to time.

Rule – 7 lays down that a district level high power committee with nine members headed by the District Collector as chairman shall



be constituted to meet every three months and review the progress of identification and removal of encroachments.

Rule – 8 says that at Commissionerate level, a Vigilance and 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.

**22.** Thus, as can be seen, the above Rules are like a self contained code for removal of encroachment of the properties relating to a Gram Panchayat. Rule – 4 pellucidly expounds that it is the executive authority (Panchayat Secretary) who shall serve notice on the encroacher and conduct brief enquiry by hearing him and pass the order. In that view, the show cause notices issued by the Panchayat Secretary of 5<sup>th</sup> respondent-Gram Panchayat cannot be clamoured to be unauthoritative and inoperative in the eye of law. Running the risk of pleanoism it must be said that the notices issued by the Secretary of 5<sup>th</sup> respondent are legally valid and cannot be set aside as they do not suffer any legal infirmity. However, since Rule-4 expressly lays down that the executive authority shall, after serving notice to the encroacher, give brief hearing before proceeding for eviction, and as the executive authority (Panchayat Secretary) has not afforded a personal hearing to the petitioners before issuing final notices of eviction dated 28.02.2020, such final notices can be set aside and he



can be directed to give brief personal hearing to the petitioners and pass final order.

**23.** In the result, this writ petition is disposed of.

- 1) Holding that the show cause notices issued by the executive authority (Panchayat Secretary) of 5<sup>th</sup> respondent are valid.
- 2) However, the final notices of eviction dated 28.02.2020 are set aside and the executive authority (Panchayat Secretary) of 5<sup>th</sup> respondent is directed to afford personal hearing to the writ petitioners in respect of their explanations submitted against the show cause notices and pass orders in accordance with the governing rules expeditiously. Till such exercise is completed, the possession of the petitioners in respect of their respective shop rooms shall not be disturbed. No costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

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**U. DURGA PRASAD RAO, J**

08.05.2020

**Note: LR Copy to be marked**

(B/O)

PVD