



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
WRIT PETITION NO: 31042 OF 2022

Between:

1. ANNAM NAGULU/NAGULU MEERA S/o Peda Saidulu, aged 39 years, Occ.Coolie, R/o D.No.17-3-165/3.
2. Annam Papaiah S/o China Saidulu, aged 41 years, Occ.Coolie, R/o D.No.17-3-165/2.
3. Bathula Koteswara Rao S/o Venkateswarlu, aged 40 years, Occ.Coolie, R/o D.No.16-8-25.
4. Annam Masthan Vali S/o Babu, aged 44 years, Occ.Coolie, R/o D.No.17-3-165/36.
5. Annam Papaiah S/o Subhani, aged 30 years, Occ.Coolie, R/o D.No.17-3-165/35.
6. Amareswarapu Jagannadham S/o Ramaiah, aged 66 years, Occ.Coolie, R/o D.No.17-3-165/34.
7. Jangala Manikyamma W/o Dariya Vali, aged 58 years, Housewife, R/o D.No.17-3-8/3.
8. Jangala Mariyamma W/o Kumar, aged 60 years, Occ.Coolie, R/o D.No.17-3-165/2.
All are located Near Nagoorvali Talkies,
in 4th Ward, Narasaraopet Town,
Palnadu District.

...PETITIONER(S)

AND:

1. THE STATE OF ANDHRA PRADESH rep. by its Principal Secretary, Municipal Administration and Urban Development Department, Secretariat Buildings, Velagapudi, Guntur District.
9. The District Collector Palnadu District, at Narasaraopet.
10. Narasaraopet Municipality rep. by its Commissioner, Narasaraopet, Palnadu District.

...RESPONDENTS

Counsel for the Petitioner(s): KOCHIRI RAJA SHEKAR

Counsel for the Respondents: GP FOR MUNICIPAL ADMN URBAN DEV

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 31042 of 2022

Between:

Annam Nagulu @ Nagulu Meera and 7 ors.

.....PETITIONERS

AND

State of Andhra Pradesh,
Rep.by its Principal Secretary,
Municipal Administration & Urban Development
Department, Secretariat Buildings,
Velagapudi,
Guntur District and 2 ors.

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **23.09.2022**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J



*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+ WRIT PETITION No. 31042 of 2022

% 23.09.2022

Annam Nagulu @ Nagulu Meera and 7 ors.

....Petitioners

Versus

\$ State of Andhra Pradesh,
Rep.by its Principal Secretary,
Municipal Administration & Urban Development
Department, Secretariat Buildings,
Velagapudi,
Guntur District and 2 ors.

.....Respondents

! Counsel for the Petitioners: Sri K. Raja Shekar

^ Counsel for the respondent No.1: AGP for Municipal Corporation

Counsel for the respondent No.2: AGP for Revenue

Counsel for the respondent No.3: Sri M. Manohar Reddy, SC

< Gist :

> Head Note:

? Cases Referred:

1. (1985) 3 SCC 545
2. (2011) 9 SCC 97



THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No. 31042 of 2022

JUDGMENT:

Heard Sri K. Raja Shekar, learned counsel for the petitioners, learned Assistant Government Pleader for Municipal Corporation for respondent No.1, learned Assistant Government Pleader for Revenue for respondent No.2 and Sri M. Manohar Reddy, learned standing counsel for 3rd respondent.

2. This writ petition under Article 226 of the Constitution of India has been filed for the following relief:-

“...to issue an appropriate writ or any other order or direction particularly one in the nature of writ of mandamus declaring the action of the 3rd respondent in issuing the order in Roc.No.1105/2022/G1, dated 08.09.2022 in so far as directing the petitioners to vacate from their respective houses is concerned, is illegal, contrary to the provisions of the A.P. Municipalities Act and violative of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the respondent Nos.2 and 3 not to dispossess the petitioner's from their houses bearing Door Nos.17-3-165/3, 17-3-165/2, 16-8-25, 17-3-165/36, 17-3-165/35, 17-3-165/34, 17-3-8/3 and 17-3-165/2 respectively, situated in Ward No.4 in T.S.No.1628 of Narasaraopet Town, Palnadu District till finalization of the allotment of house sites and pass such other order or orders...”

3. The petitioners have filed this petition under Article 226 of the Constitution of India challenging the order in Roc.No.1105/2022/G1, dated 08.09.2022 passed by the Municipal Commissioner of the 3rd respondent Municipality, Narasaraopet Town, Palnadu District, against the petitioners



directing them to vacate from the encroached land situated in Ward No.4 in T.S.No.1628 of Narasaraopet Town, Palnadu District.

4. Initially one Sri Shaik Sharath filed W.P.No.4213 of 2019 on the allegations that he was the owner and possessor of the property to certain extent situated in T.S.No.908, Chintada Village, Guntur District. He obtained building permission, but some persons encroached part of his land as also some part of the public land by raising huts thereon for which he submitted representations to the Municipal Authorities for removal of the encroachment but no action was taken.

5. W.P.No.4213 of 2019 was disposed of on 08.04.2019 by this Court directing the Municipality concerned to take appropriate action for removal of the encroachments in accordance with law preferably within the specified period.

6. Operative part of order dated 08.04.2019 in W.P.No.4213 of 2019 is as under:

“...Considering the submission made by the learned standing counsel, this Court felt it appropriate to direct the 2nd respondent to take appropriate action for removal of encroachments in accordance with law, as expeditiously as possible, preferably within a period of three (3) months from the date of receipt of a copy of the order. There shall be no order as to costs.”

7. The Municipality issued notice dated 24.04.2021 to the petitioners directing for their eviction against which the petitioners filed W.P.No.9277 of 2021, which was allowed on 29.04.2021, setting aside the notice dated 24.04.2021, but providing that the respondents therein were at liberty to issue



show cause notice in the first instance to the petitioners calling for their explanation and after receiving the explanation to consider the same with a pragmatic approach in the light of the earlier pronouncement of the Hon'ble Apex Court, on the point of landless and houseless poor persons and to pass a reasoned order accordingly. The petitioners were granted liberty to submit their explanation to the show cause notice.

8. The operative part of order dated 29.04.2021 in W.P.No.9277 of 2021 is reproduced as under:

“..Therefore, the Writ Petition is allowed setting aside the impugned notices dated 24.04.2021 issued to the petitioners. However, the respondents are at liberty to issue show cause notice in the first instance to the petitioners calling for their explanation as to why they should not be evicted from the lands which are alleged to have been encroached and after receiving the explanation from the petitioners, they have to consider the same with a pragmatic approach in the light of the earlier pronouncement of the Apex Court, as the petitioners state that they are landless poor and houseless poor, and pass a reasoned order in this regard and then proceed according to law. The petitioners are at liberty to submit their explanation to the show cause notice that may be issued to them taking a plea relating to the protection given to such landless poor people by the Apex Court as per the earlier judicial pronouncements and the respondents have to take into consideration the said explanation that may be offered by the petitioners before passing any order in this regard. There shall be no order as to costs.”

9. Sri K. Raja Shekar, learned counsel for the petitioners, submits that in W.P.No. 4213 of 2019, the present petitioners were not party.

10. The petitioners, challenged the judgment dated 08.09.2019 in W.P.No.4213 of 2019 by filing W.A. 372 of 2021.



11. In W.A.372 of 2021, by order dated 01.12.2021 the Commissioner, Narasaraopet Municipality was directed to submit a report as to whether the encroachment was on public land or road or road margin or on the property possessed by any individual. The report was submitted along with memo dated 29.12.2021, inter-alia stating that survey was conducted on 21.12.2021 and it was found that the appellants in the writ appeal i.e., the present petitioners, encroached the land other than the land of the writ petitioner therein i.e., Sri Shaik Sharat Ali, located in T.S.Nos.908 & 909 of Narasaraopet Municipality. The report further stated that the appellants (the petitioners herein) had encroached the road in the poramboke land situated in Sy.No.1628 of Narasaraopet Municipality. The Hon'ble Division Bench after recording the said contents of the report, held that "Thus it is clear that the appellants have encroached upon the poramboke land and not upon any private property."

12. The Court did not find any substance in the writ appeal which was accordingly dismissed on 04.01.2022, however it was provided that the time allowed for compliance with the order dated 08.10.2019 passed in W.P.No. 4213 of 2019 shall commence from 04.01.2022.

13. The relevant part of the judgment dated 04.01.2022 in W.A.No.372 of 2021 is reproduced as under:

"4. On 01.12.2021, this Court directed the Commissioner, Narasaraopet Municipality (respondent No.3 herein) to submit a report as to whether the encroachment is on public land or road or road margin or on the property possessed by any individual. In terms of the said direction, a report has been submitted along with a memo dated 29.12.2021. In paragraph 3 of the report, it was stated that survey was conducted on 21.12.2021 and it was found that the



appellants in this appeal encroached the land other than the land of the writ petitioner/1st respondent located in T.S.No.908 and 909 of Narasaraopet Municipality. It was further stated that the appellants encroached the road poramboke land situated in Sy.No.1628 o Narasaraopet Municipality. Thus, it is clear that the appellants have encroached upon the poramboke land and not upon any private property.

5. In view of the above, we do not find any substance in this writ appeal.

6. Accordingly, the Writ Appeal is dismissed. The time allowed for compliance of the order passed by the learned single Judge shall commence from today. No costs. All pending miscellaneous applications shall stand dismissed.”

14. The Municipality again issued notice dated 11.02.2022 to which the petitioners filed reply dated 12.02.2022. Another notice was also given on 21.02.2022.

15. Challenging the aforesaid notices dated 11.02.2022 and 21.02.2022, the petitioners filed W.P.No.5137 of 2022 which was allowed on 27.07.2022 remanding the matter to the Municipality, to consider the objections of the petitioners and pass orders in accordance with law.

16. After the order dated 27.07.2022 in W.P.No.5237 of 2022, the petitioners were again issued notice dated 24.08.2022 vide Roc.No.1105/2022/G1. The petitioners filed their reply dated 30.08.2022 and also attended the 3rd respondent on the date fixed for conducting enquiry.

17. The Municipal Commissioner, Narasaraopet Municipality has passed the impugned endorsement ROC.No.1105/22/G1 dated 08.09.2022, individually in the case of all the petitioners.



18. Challenging the aforesaid endorsements dated 08.09.2022, the petitioners have filed the present writ petition for the reliefs as mentioned above.

19. Sri K. Raja Shekar, learned counsel for the petitioners, submits firstly, that the impugned endorsements do not mention the legal provision under which those endorsements have been passed, and secondly, that the petitioners have not been allotted the alternative site to provide them the accommodation before their eviction.

20. Learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Olga Tellis v. Bombay Municipal Corporation¹***, as also the order dated 24.04.2021 passed by this Court in W.P.No.9277 of 2021.

21. Learned counsel for the petitioners further submits that the petitioners' encroachment is since long and is not causing any hindrance to the public or to the running of the traffic.

22. Sri G. Naresh, learned counsel, appearing for the Municipality, submits that the impugned endorsements have been passed with due observance of the principles of natural justice as also complying with the directions issued by this Court in various writ petitions mentioned above.

23. Sri G. Naresh further submits that the judgment in ***Olga Tellis*** case (supra) is of no help to the petitioners as that was in the facts of that case, particularly that the State therein had given the assurance that those poor

¹ (1985) 3 SCC 545



persons in the slum areas would not be evicted and some provision for alternate site would be made for them.

24. I have considered the submissions advanced by learned counsels for the parties and perused the material on record.

25. Learned counsel for the petitioners on specific query made by the Court, submits (i) that the petitioners have no right to the land in question, and (ii) that the petitioners are the encroachers over the land in question.

26. Even otherwise, the Hon'ble Division Bench in judgment dated 04.01.2022 in W.A.No. 372 of 2021, has clearly recorded that the petitioners have encroached upon the poramboke land situated in Sy.No.1628 of Narasaraopet Municipality.

27. In view of the aforesaid, there is now no dispute on the point that the petitioners have encroached upon the public land in question with respect to which the impugned endorsements have been passed.

28. The first submission of the learned counsel for the petitioners that there is no mention of any specific provision of any specific statute in the endorsements impugned and as such those endorsements are illegal, deserves rejection. On a specific query made to learned counsel for the petitioner, he submits that the Municipal Commissioner, has the jurisdiction in the matter, but he further submits that if the relevant provisions were mentioned in the impugned endorsement and the notices issued to the petitioners they could have properly submitted their reply. However, a perusal of the petitioners' reply do not show that they expressed any inability or inconvenience in



submitting reply for want of mention of the legal provisions in the notices, which notices are also not under challenge. It could also not be stated by the learned counsel for the petitioners as to what other reply the petitioners could have furnished if the legal provision was mentioned in the notice. Such a plea is after thought and is not acceptable having no substance.

29. It is settled in law that mere mentioning of wrong provision or wrong Act would not vitiate the notice or the order when the authority has the jurisdiction to issue the notice or/and to pass order and that the power and jurisdiction is traceable to some statute. The same principle of law would apply equally to a case where the notice or the order does not make mention of any provision of the statute.

30. In ***MIG Cricket Club v. Abhinav Sahakar Education Society***² the Hon'ble Apex Court held that it is trite that the validity of the order does not depend upon the section mentioned in the order. Wrong provision mentioned in the order itself does not invalidate the order, if it is found that the order could be validly passed under any other provision.

31. Paragraph-27 of ***MIG Cricket Club*** (supra) is reproduced as under:

“27. It seems that the High Court misdirected itself by considering the Notification dated 10-4-1985 to be the sanction of the development plan under Section 37(2) [*sic* Section 31(1)] of the Act and the Notification dated 24-4-1992 to be the modification of the final development plan which has rendered its order illegal. It is trite that the validity of the order does not depend upon the section mentioned in the order. Wrong provision mentioned in the order itself does not invalidate the order, if it is found that order could be validly passed

² (2011) 9 SCC 97



under any other provision. However in a case, like the present one, contrary to what has been mentioned in the notifications the Court cannot say that such powers were not exercised to render the notification illegal if in fact such power exists.”

32. The second submission of the learned counsel for the petitioners is that the petitioners have not been allotted alternative sites before their eviction which as submitted is contrary to the law as laid down in ***Olga Tellis*** (supra), placing much emphasis on paras-55, 56 & 57 of ***Olga Tellis*** (supra).

33. I have considered the judgment of the Hon'ble Apex Court in ***Olga Tellis*** (supra).

34. Paragraphs 55, 56 and 57 of the judgment in ***Olga Tellis*** (supra), upon which much emphasis has been laid by the learned counsel for the petitioners, are reproduced as under:

“55. There is no short term or marginal solution to the question of squatter colonies, nor are such colonies unique to the cities of India. Every country, during its historical evolution, has faced the problem of squatter settlements and most countries of the under-developed world face this problem today. Even the highly developed affluent societies face the same problem, though with their larger resources and smaller populations, their task is far less difficult. The forcible eviction of squatters, even if they are resettled in other sites, totally disrupts the economic life of the household. It has been a common experience of the administrators and planners that when resettlement is forcibly done, squatters eventually sell their new plots and return to their original sites near their place of employment. Therefore, what is of crucial importance to the question of thinning out the squatters' colonies in metropolitan cities is to create new opportunities for employment in the rural sector and to spread the existing job opportunities evenly in urban areas. Apart from the further misery and degradation which it involves, eviction of slum and pavement dwellers is an



ineffective remedy for decongesting the cities. In a highly readable and moving account of the problems which the poor have to face, Susan George says [*How the other Half Dies — The Real Reasons for World Hunger* (Pelican books)] :

“So long as thoroughgoing land reform, re-grouping and distribution of resources to the poorest, bottom half of the population does not take place, third world countries can go on increasing their production until hell freezes and hunger will remain, for the production will go to those who already have plenty — to the developed world or to the wealthy in the Third World itself. Poverty and hunger walk hand in hand.” (p. 18)

56. We will close with a quotation from the same book which has a message:

“Malnourished babies, wasted mothers, emaciated corpses in the streets of Asia have definite and definable reasons for existing. Hunger may have been the human race's constant companion, and ‘the poor may always be with us’, but in the twentieth century, one cannot take this fatalistic view of the destiny of millions of fellow creatures. Their condition is not inevitable but is caused by identifiable forces within the province of rational human control.” (p. 15)

57. To summarise, we hold that no person has the right to encroach, by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground; that the provision contained in Section 314 of the Bombay Municipal Corporation Act is not unreasonable in the circumstances of the case; and that, the Kamraj Nagar Basti is situated on an accessory road leading to the Western Express Highway. We have referred to the assurances given by the State Government in its pleadings here which, we repeat, must be made good. Stated briefly, pavement dwellers who were censused or who happened to be censused in 1976 should be given, though not as a condition precedent to their removal, alternate pitches at Malavani or, at such other convenient place as the Government considers reasonable but not farther away in terms of distance; slum dwellers who were given identity cards and whose dwellings were numbered in the 1976 census must be given alternate sites for their resettlement; slums which have been in existence for a long time, say for twenty



years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purpose, in which case, alternate sites or accommodation will be provided to them; the “Low Income Scheme Shelter Programme” which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and, the “Slum upgradation Programme (SUP)” under which basic amenities are to be given to slum dwellers will be implemented without delay. In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season, that is, until October 31, 1985 and, thereafter, only in accordance with this judgment. If any slum is required to be removed before that date, parties may apply to this Court. Pavement dwellers, whether censused or uncensused, will not be removed until the same date viz. October 31, 1985.”

35. In *Olga Tellis* (supra) the writ petitions therein portrayed the plight of lakhs of persons who live on pavements and in slums in the city of Bombay. They had approached the Hon’ble Apex Court asking for a judgment that they could not be evicted from their squalid shelters without being offered alternative accommodation, relying upon their rights under Article 21 of the Constitution of India which guarantees that no person shall be deprived of his life except according to procedure established by law. They also relied upon their right to reside and settle in any part of the country which is guaranteed by Article 19(1)(e) of the Constitution of India. The Government of Maharashtra therein *inter alia* took a stand that those persons had no legal right to encroach upon or to construct any structure on a footpath, public street or on any place over which the public has a right of way. The Government of Maharashtra had also issued policy directives that 75% of the housing programme should be



allocated to the lower income groups and the weaker sections of the society, besides many other schemes for their benefits. The State Government had also stepped up the rate of construction of tenements for the weaker sections of the society. The provisions of Sections 312, 313 and 314 of the Bombay Municipal Corporation Act were challenged as violating Articles 14, 19 and 21 of the Constitution of India. On behalf of Bombay Municipal Corporation also counter affidavit was filed, *inter alia* taking the stand that no prior notice of demolition was given since the section does not provide for any such notice.

36. In ***Olga Tellis*** (supra) the Hon'ble Apex Court held that two conclusions emerge; one, that the right to life which is conferred by Article 21 of the Constitution of India includes the right to livelihood; and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Article 21 of the Constitution of India, such deprivation has to be according to procedure established by law. The Hon'ble Apex Court further held in that case that the law which allowed the deprivation of the right conferred by Article 21 of the Constitution of India is the Bombay Municipal Corporation Act, the relevant provisions of which are contained in Sections 312(1), 313(1)(a) and 314. The Hon'ble Apex court concluded that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for removal of encroachments on the footpaths or pavements over which the public has the right of passage or access, cannot be regarded as unreasonable, unfair or unjust.



37. In paragraph-57 of ***Olga Tellis*** (supra), the Hon'ble Apex Court summarized and held that no person has the right to encroach by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose like, for example, a garden or a playground, it was held that the pavement dwellers who had censused or happened to be censused in 1976 should be given alternate pitches, though not as a condition precedent to their removal. The assurance given by the State Government in that case in its pleadings, it was held that must be made good.

38. From the aforesaid, the ratio of the judgment in ***Olga Tellis*** (supra) is that the right to life which is conferred by Article 21 of the Constitution of India is not an absolute right and the Constitution of India does not put an absolute embargo on the deprivation of life or personal liberty, but such deprivation has to be according to procedure established by law. In the present case, the A.P.Municipalities Act provides for the deprivation as per the procedure contained in the said Act. There is no challenge to the procedure prescribed nor that the procedure, in particular, due observance of the principles of natural justice by affording opportunity of hearing was not followed. The petitioners were issued notices to which they filed reply and also attended for personal hearing and thereafter the impugned endorsements were passed.

39. So far as providing of alternative site before eviction from public place is concerned, in ***Olga Tellis*** (supra), the State Government had given assurance in its pleadings. The directions were given to make good those



assurances and to provide alternative pitches, but not making the same as a condition precedent to the removal of the pavement dwellers etc. The law that has been laid down is also that no person has right to encroach by erecting a structure or otherwise on footpaths, pavements or any other public place or any other place reserved or earmarked for public purpose.

40. The impugned endorsements in the present case grant opportunity to approach the Municipality to enable it to take steps for allotment of suitable site, pursuant to their eligibility criteria under any of the Government Schemes for providing alternative site to the persons below poverty line.

41. Thus, the direction given in the judgment dated 29.04.2021 in W.P.No.9277 of 2021 has been taken care of, while considering the petitioners' cases, but, as the learned counsel for the petitioners has submitted, the petitioners have not approached the Municipality pursuant to such direction under any of the Schemes of the Government, if any.

42. With respect to the last submission of the learned counsel for the petitioners as regards no public inconvenience, the Municipal Commissioner has specifically recorded in the endorsements that it is felt necessary to evict the petitioners from encroached land as there is very much inconvenience to the public and routine traffic to pass from that road as well as to avoid accidents. Learned counsel for the petitioners submits that the authorities recently constructed a rail over bridge near to the land in question and closed down the level crossing on the railway track and there is no passage of road traffic underneath the bridge. However, on the said submission, it cannot be said that



no inconvenience is caused to the public and there is no chance of accident, as the existence of over bridge and railway track nearby is admitted to the petitioners. The finding recorded by the Commissioner is of fact and this Court considers that in the exercise of Writ Jurisdiction it would not be appropriate to enter into that aspect of the matter to determine the inconvenience of the public as also the possibility of accident. Such finding of fact is not open for any interference by this Court under Article 226 of the Constitution of India.

43. In the present case, the opportunity of hearing including personal hearing has been given to the petitioners, the impugned endorsements have been passed by the Commissioner observing the principles of natural justice.

44. In the result, the Writ Petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 23.09.2022
Cbn/Dsr

Note:
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B/o
Dsr