

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 13011 of 2012

ORDER:

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Heard learned counsel for the petitioners and learned Government Pleader for Revenue. With the consent of both the parties, the main writ petition is heard at the admission stage itself.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in threatening to dispossess the petitioners from their house properties situated in TS No.45/2/2 and T.S.No.46 of Suryaraopet, Kakinada, without passing orders on the explanation submitted by the petitioners dated 09.05.2011 pursuant to a show cause notice under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905, as illegal, arbitrary and un-constitutional; and consequently direct the respondents not to dispossess the petitioners from their house properties.

Learned counsel for the petitioners submits that pursuant to a show cause notice issued under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905, the petitioners herein submitted their explanations on 09.05.2011, but till date no orders are passed. It is stated that without passing any orders on the explanations submitted by the petitioners, the respondents are trying to dispossess the petitioners from the said house properties.

By an order dated 27.04.2012, this Court while issuing notice before admission granted interim stay of dispossession till 15.06.2012 and thereafter it was extended by three weeks.

The second respondent filed counter denying the averments made in the affidavit filed in support of the writ petition. It would be relevant to extract the relevant portion of the counter, which is as under:

“In reply to para 7 and 8 of the affidavit, it is submitted that the allegations made by the petitioners that the respondents are trying to dispossess the petitioners under the influence of nearby colony members are not correct. They were issued notices under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 as the encroachments are objectionable. There is no influence on the respondents as alleged by the petitioners. There is no infringement of the rights of the petitioners as guaranteed under Article 226 of the Constitution of India. It is humbly submitted the PWD canal cannot be regularized as per G.O.Ms.No.166 dated 16.02.2008. The petitioners have no right to agitate against the Government for regularization of their encroachment as the land is required for public purpose. Public purpose prevails over private purpose. As per the Andhra Pradesh Land Encroachment Act, 1905, the petitioners have alternative remedy i.e. they have at liberty to approach the Revenue Divisional Officer, Kakinada, for redressal in this case since the Revenue Divisional Officer, Kakinada is the appellate authority. So far Section 6 proceedings of the Act, has not been issued. Therefore, the petitioners’ averment is only imaginary.”

In view of the clear admission made in the counter that the proceedings under Section 6 of the Act are not issued till date, the writ petition is disposed of directing the respondents not to take any coercive steps till disposal of the explanation submitted by the petitioners, which shall be done within twelve (12) weeks from the date of receipt of a copy of this order. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

14.09.2015
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