

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No. 10855 of 2015

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ORDER:

This writ petition is filed by the petitioners questioning the action of the 4th respondent-Tahsildar in trying to dispossess them from the land over an extent of Ac.1-32 cents in Survey No.1592 of T. Chundupalli village fields, T. Sundupalli mandal, YSR District, without considering their representation dated 30.03.2015 and without passing orders under Section 6 of the A.P. Land Encroachment Act, 1905 (for short, 'the Act').

2. It is the case of the petitioners that their father late Ibrahim owned an extent of Ac.2-80 cents in Survey No.1593 of T.Chundupalli village fields, T.Sundupalli mandal, YSR District, and adjacent to the said land, the land in an extent of Ac.1-32 cents in Survey No.1592 was also occupied by their father and a mango garden was raised therein. After demise of their father, the land over an extent of Ac.2-80 cents in Survey No.1593 devolved on the petitioners and the petitioners have also been enjoying the land in Survey No.1592 over an extent of Ac.1-32 cents. While so, the 4th respondent issued notice under Section 7 of the Act. The petitioners submitted their explanation to the said notice on 30.03.2015, but the 4th respondent, without considering their explanation, is trying to dispossess them.

3. Learned counsel for the petitioners submits that the petitioners were in continuous peaceful possession and enjoyment of the land in an extent of Ac.1-32 cents in Survey No.1592 for the past thirty years and a mango garden was also raised therein, and the petitioners submitted their explanation on 30.03.2015, but the 4th respondent is trying to dispossess the petitioners without considering their explanation.

4. Learned Assistant Government Pleader submits that the respondent authorities have not taken any coercive action, and in case they intend to evict the petitioners, they will follow due process of law.

5. The law amply mandates issuance of a notice under Section 7 of the Act calling for explanation from the encroacher; and in case the authorities are not satisfied with the explanation, then a notice under Section 6 of the Act stipulating a time limit for vacating the encroachment has to be issued; and if the encroacher fails to vacate within the time stipulated, then the authorities can evict him. While considering the explanation of the encroacher, the respondent-authorities are required to objectively consider the objections including the nature of occupation, the length of time under the occupation of the encroacher etc. In case there is an element of dispute in relation to the title, summary procedure contemplated under the Act cannot be instituted, as the Act is not a short-cut for deprivation of a citizen's undisputed possession over a long period. In such cases, the proper remedy would be to approach the Civil Court for recovery of possession. All the above elements are required to be reflected by way of a Speaking Order under Section 6 of the Act. It is only thereafter, by putting on notice, a person can be asked to vacate the land and, in the process, specify a reasonable time for doing so. Though procedure contemplated for eviction under the Act is somewhat summary, the same is not intended to short-circuit the whole procedure prescribed under and read into the Act by the Courts.

6. In that view of the matter, the 4th respondent shall consider the explanation/objections of the petitioners, dated 30.03.2015, and pass Speaking Orders under Section 6 of the Act, in accordance with law. It is needless to mention that mere issuance of notice under Section 6 of the Act cannot be termed as considering the objections raised by the petitioners. Till the entire exercise is completed, the petitioners shall not be evicted from the land in an extent of Ac.1-32 cents in Survey No.1592 of T.Chundupalli village fields, T.Sundupalli mandal, YSR District.

7. Accordingly, the writ petition is disposed of. No costs. Miscellaneous petitions, if

any pending, shall stand closed.

CHALLA KODANDA RAM, J

17th April, 2015

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