

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

-
WRIT PETITION No. 3385 of 2015

ORDER:

Challenging the notice dated 05.02.2015 issued under Section 7 of the A.P. Land Encroachment Act, 1905 (for short, 'the Act') by the 2nd respondent, seeking eviction of petitioners from the lands in their occupation, this writ petition is filed.

2. The averments in the writ affidavit, briefly, are to the effect that one Mr. Ramanayya, who is the father-in-law of petitioners 1 and 2, permitted the petitioners 1 and 2 to live in the house and they are in possession of the house for several years and they approached the 2nd respondent seeking Possession Certificates and they were issued with such certificates. Petitioner No.3 is said to have purchased his property by way of a registered sale deed in a Court auction. While so, the 2nd respondent issued a notice on 27.12.2014, under the Act, to which the petitioners submitted their explanation. But the 2nd respondent again issued notice dated 05.02.2015, which is impugned in this writ petition, seeking to evict them from their lands.

3. Learned counsel for the petitioners, while reiterating the averments in the writ affidavit, submits that the petitioners are lawfully in possession of the houses, and hence the action of the 2nd respondent in issuing notice under Section 7 of the Act, seeking their eviction, is illegal.

4. Learned Assistant Government Pleader submits that the impugned notice is only a letter calling for explanation from the petitioners and the respondents have not taken any coercive action, and in case they intend to take any action affecting petitioners' right over the property, they will put the petitioners on notice and 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. Hence, the impugned notice is set aside. However, this order does not restrain the authorities from enquiring into the matter and issuing a fresh notice, if need be. Further, it is needless to mention that in case the respondents contemplate any action against the petitioners affecting their rights over the property in question, they shall follow due process of law.

7. Accordingly, the writ petition is disposed of. No costs. In consequence, pending miscellaneous petitions, if any, stand closed.

CHALLA KODANDA RAM, J

18th February, 2015
ksm