

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

WRIT PETITION No. 3142 of 2015

-
13.02.2015

Between

P. Ravinder Reddy

... Petitioner

\$ 1. State of Telangana & 2 others

...Respondents

! COUNSEL FOR PETITIONER : K. Venkat Reddy

^ COUNSEL FOR RESPONDENTS : Assistant Government Pleader

< Gist:

> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No. 3142 of 2015

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ORDER:

The writ petitioner questions the action of the 3rd respondent-
Tahsildar in issuing Notice No.B/112/2014 dated 03.09.2014 under

Section 7 of the A.P. Land Encroachment Act, 1905 (for short, 'the Act').

2. It is the case of the petitioner that he owns agricultural lands admeasuring Ac.4-13 gts, Ac.3-17 gts and Ac.0-09 gts in Survey Nos.970/AA, 972/A and 972/E, respectively, and he gave General Power of Attorney to his father to look after the lands; and a cattle-shed was erected in his land and also in a certain portion of land in Survey No.969, which is stated to belong to one Pulichinthala Narayana Reddy. While so, stating that the petitioner encroached Ac.1-03 gts out of Ac.45-30 gts of Kunta in Survey No.968 of Huzurnagar, which is presumably a Government land, the 3rd respondent issued the impugned Notice asking him to explain as to why he should not be evicted, in addition to forfeiting the material placed in the encroached land. Asserting that he raised the cattle-shed in private lands and did not encroach the Government land, he submitted a reply on 04.01.2015, but, however, no communication is received from the respondents.

3. Learned counsel for the petitioner submits that the petitioner raised cattle-shed in private lands and has not encroached upon any Government land. He submits that the impugned notice was issued merely on a rumour that the petitioner encroached Government land and no prior enquiry was conducted before such issuance of notice. The counsel further submits that the petitioner replied to the notice on 04.01.2015 setting out his stand, but no communication is forthcoming from the respondents till date.

4. Learned Assistant Government Pleader submits that the impugned notice is only a letter calling for explanation from the petitioner and the respondents have not taken any coercive action, and in case they intend to take any action affecting petitioner's right on the property, they will put the petitioner 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. In the instant case, the impugned notice is issued without proper enquiry or basis, and hence the same is bad in law and is liable to be set aside.

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 petitioner affecting his 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

13th February, 2015

ksm