

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION No.42549 OF 2015

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Revenue.

The petitioner questions the resumption order, dated 28.11.2015, Ex.P1, passed by the Tahsildar, Santhamaguluru Mandal, Prakasam District, the 4th respondent. Earlier the petitioner had approached this Court by W.P.No.24979 of 2015, which was disposed of on 20.08.2015 directing the 4th respondent therein to issue appropriate notice to the petitioner, if any action is intended to be taken against him. Thereafter, a notice was given to the petitioner proposing to resume the land and an order under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (for short, 'the Act') was passed. The same was again questioned by the petitioner in W.P.No.32288 of 2015 and on finding that the said order was an unreasoned order, the same was set aside by order, dated 27.10.2015, which is as under:

“.... As the purpose of calling for explanation from the petitioner in response to the notice under Section 7 of the Act has not been fulfilled, as there is no consideration of the explanation of the petitioner, while passing order under Section 6 of the Act by the fourth respondent, there is no option but to set aside the impugned order passed under Section 6 of the Act by the fourth respondent and remit the matter to the fourth respondent for fresh consideration. The fourth respondent shall consider the explanation submitted by the petitioner on 04.09.2015, on merits, after notice to the petitioner and then pass appropriate reasoned order in accordance with law.”

Earlier, pending W.P.No.32288 of 2015, there was an interim order, dated 05.10.2015, staying eviction of the petitioner. However, with the aforesaid final order, dated 27.10.2015, the Writ Petition itself stood disposed of.

The present impugned order, dated 28.11.2015, giving reasons under Section 6 of the Act is, however, passed by the 4th respondent on an assumption that W.P.No.32288 of 2015 is still pending, as is evident from the impugned order itself. Though the said Writ Petition was disposed of almost two months earlier, apparently the 4th respondent was not aware of the same and the direction therein, as extracted above. As a result, the present impugned order giving reasons under Section 6 of the Act is passed without notice to the petitioner.

Since the earlier order, as extracted above, is required to be complied with by the 4th respondent, there is no option for this Court except to set aside the impugned order and remit the matter to the 4th respondent for fresh consideration, so as to comply with the directions given in W.P.No.32288 of 2015.

However, at the request of learned Government Pleader for Revenue and in order to avoid problems arising out of service of notice, as directed above, to the petitioner, with the consent of both parties, the date of hearing is fixed as 25.01.2016, on which date the petitioner shall appear before the 4th respondent and the 4th respondent shall hear him and then pass appropriate fresh orders in accordance with law.

The Writ Petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

VILAS V.AFZULPURKAR, J

30.12.2015

Note:- Issue C.C. in one week.

(B/o)

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