

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 37350 of 2014

ORDER:

Action of the 3rd respondent-Tahsildar in initiating eviction proceedings under Section 6 of the A.P. Land Encroachment Act, 1905 (for short, 'the Act') by way of Notice in Rc.B.No.2680/2013 dated 22.05.2013, is challenged in this writ petition.

2. The averments in the writ affidavit, in brief, are that the 1st petitioner who is the erstwhile owner of Ac.0-11 cents in Survey No.380/1A2, Patta No.412, Nellore Bit II village, Nellore Municipal Corporation limits, through purchase from one Yanamala Venkata Subbaiah and 5 others by way of a registered sale deed vide Document No.5037/2005, sold an extent of Ac.0-8½ cents out of the said Ac.0-11 cents to the 2nd petitioner on 13.05.2005; thereby the 2nd petitioner became the absolute owner of the said portion of land. While so, on 22.11.2014, the 1st petitioner found the impugned Notice affixed in the 3rd respondent's office premises, wherein it is stated that proceedings to evict the petitioners from the land in question have been initiated. The petitioners state that one Mekala Venkata Sessaiah and 5 others, and one Punur Surendra Reddy, who also have lands in the very same Survey No.380/1A2, filed W.P.Nos.15929 and 20103 of 2013, challenging the eviction proceedings initiated by the respondents therein; and this Court has set aside the impugned proceedings and allowed the writ petitions. Challenging the action of respondent authorities in initiating eviction proceedings, without prior notice, and claiming that they are also on the same footing as that of the petitioners in the above referred writ petitions, the petitioners seek a similar relief granted by this Court in the said writ petitions.

3. At the hearing, the petitioners' counsel contends that no notice whatsoever was served on the 2nd petitioner who is the actual owner

as he acquired the said land in an extent of Ac.0-8½ cents by way of a registered sale deed dated 13.05.2005. Learned counsel relies on the orders of this Court in the W.P.Nos.15929 of 2013 wherein this Court allowed the writ petition in favour of the petitioners therein, in respect of very same survey number.

4. On the other hand, learned Assistant Government Pleader places on record a notice dated 08.05.2013 issued under Section 7 of the Act by the 3rd respondent-Tahsildar in the name of the 1st petitioner. He states that as there was no response from the 1st petitioner, the impugned notice dated 22.05.2013 was affixed at the residence of the 1st petitioner and the impugned action is in conformity with the procedure stipulated under the Act. He further submits that the impugned action was contemplated basing on the orders of this Court in W.P.No.11851 of 2013, dated 23.04.2013.

5. Heard rival contentions, perused the record and also the orders passed by this Court in W.P.Nos.11851, 15929 and 20103 of 2013.

6. Learned Assistant Government Pleader does not dispute the fact that similarly situated persons who are in possession of the land in the very same Survey No.380/1A2, Nellore Bit-II village filed W.P.No.15929 of 2013 challenging the notices issued by the respondents under the Act, and the said writ petition was allowed on the ground that the respondent authorities have misconstrued the order of this Court in W.P.No.11851 of 2013, dated 23.04.2013. He also does not dispute the fact that the 2nd petitioner was not served with any notice, whatsoever, prior to contemplation of eviction proceedings.

7. A perusal of the notice dated 08.05.2013 issued under Section 7 of the Act, and the notice dated 22.05.2013 issued under Section 6 of the Act would reveal that the said notices were served on the 1st petitioner who ceased to be the owner of the land by virtue of sale of the land in question to the 2nd petitioner. Hence, the notices issued in favour of the 1st petitioner are liable to be set-aside on the sole ground

that similar notices were set aside by this Court in W.P.No.15929 of 2013. Insofar as the eviction proceedings issued against the 2nd petitioner, the same are liable to be set-aside on the ground that the 2nd petitioner was not served with any notice.

8. In view of the foregoing discussion and also the facts and circumstances of the case, the writ petition is liable to be allowed by setting aside the notices dated 08.05.2013 and 22.05.2013, issued under Sections 7 and 6 of the Act.

9. Accordingly, the writ petition is allowed and the notices dated 08.05.2013 and 22.05.2013, issued under Sections 7 and 6 of the Act, are hereby set aside. However, this order shall not be construed as restraining the authorities from taking appropriate steps, as may be advised, in accordance with law. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

CHALLA KODANDA RAM, J

06th February, 2015

KSM