

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No. 5045 of 2015

DATE: 03.03.2015

Between:

Kotagiri Manmadha Rao
and another
Petitioners

□ □

And

1. The State of A.P.
2. The Revenue Divisional Officer
3. The Tahsildar

□ □

Respondents

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ORDER:-

The petitioners claim to have acquired ancestral property i.e. agricultural land admeasuring Ac.2.00 cents in Sy.No.1 situated in Singagudem Revenue village, Lingapalem Mandal, West Godavari District from their late father, who was originally assigned the property in the year 1971 on payment of land value. After their father's demise on 10.03.2005, the petitioners came to be in possession and enjoyment of the property. While so, it is stated that the 3rd respondent issued impugned notices dated 08.02.2015 under Sections 7 and 6 of the A.P. Land Encroachment Act, 1905 (for brevity "the Act") directing the petitioners to vacate the land in question. In response to the notices, the petitioners submitted their explanation on 14.02.2015 stating that the land in question is a private land. Now, the grievance of the petitioners is that the 3rd respondent, without following the due process of law and without considering the objections raised by them, are threatening to dispossess them from the land in question. Hence, the present writ petition is

filed seeking appropriate directions.

Heard the learned counsel for both the parties and perused the material placed on record.

The law amply mandates that a prior notice under Section 7 of the Act calling for the explanation / objections of the encroachers as to why they cannot be evicted, shall be issued. The authorities shall also afford them an opportunity of being heard personally and then consider the objections that may be submitted by them, and if the authorities are not satisfied with those objections, they shall pass appropriate orders indicating to that effect and issue notice under Section 6 of the Act requiring the encroachers to vacate the land within such reasonable time as may be fixed. In case the encroachers have failed to comply with the terms of notice under Section 6 of the Act, then the authorities are at liberty to resort to eviction proceedings. This legal position is no more *res integra* and is settled by the judgment of this Court reported in ***Kadiyala Sudershan and Others v. Government of Andhra Pradesh and Others***^[1] and also other reported judgments.

Having considered the rival submissions and perused the judgment cited supra, this Court is of the view that in the facts of the present case, there is no doubt that the procedure as required under the Act has not been followed. This Court, in W.P.No. 2319 of 2015, dated

06.02.2015, has clearly dealt with the necessity of a reasoned order to be passed in cases where properties / lands belonging to the Government are alleged to have been encroached. Inasmuch as the 3rd respondent has violated the procedure contemplated under the Act, the notice issued under Section 6 of the Act, which is in printed form, is liable to be set aside.

Hence, the writ petition deserves to be allowed by setting aside the impugned Notice under Section 6 of the Act. However, the petitioners, if they so desire, shall submit their detailed objections / representation, within a period of four weeks from today, and on such representation being filed, the 3rd respondent shall pass a reasoned speaking order after considering the objections that may be submitted by them. Inasmuch as the 3rd respondent, who is an authority having been conferred with the statutory power, has violated the letter of the law forcing the petitioners to approach this Court for justice, it is ordered that the 3rd respondent, in his individual capacity, shall pay costs of Rs.500/- to the petitioners.

To the extent indicated above, the writ petition is allowed.

As a sequel to the allowing of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

CHALLA KODANDA

RAM, J

03.03.2015

bcj

[\[1\]](#) 2013(5) ALD 212