

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.21132 of 2015

ORDER:

Heard.

The petitioner questions the notice issued under Section 3 of the Madras Act, 1903 now the A.P. Land Encroachment Act, 1905 (for short 'the Act'). The notice also states that it is a notice of eviction under Section 6 of the Act requiring the petitioner to handover the land admeasuring Ac.0-02 cents in Sy.No.185/3 situated at Kalakati Village, allegedly encroached by her on the ground that the said land is a Government land. The petitioner questions the said action stating that she was granted house site patta in Sy.No.185/3 by the then Mandal Revenue Officer on 28-06-2005 and she constructed a building in the year 2006 and is in possession since then. The allegation of encroachment is, therefore, denied and it is stated that the 3rd respondent is likely to demolish the house on the basis of the said notice. Hence, the present writ petition is filed.

I find from the record that the notice, which is impugned, appears to be an eviction notice under Section 6 of the Act. A mere reading of Sections 6 and 7 of the Act shows that the Tahsildar has to first issue show-cause notice under Section 7 of the Act and after receiving the explanation, pass appropriate orders under Section 6 of the Act, if he is of the opinion that there is an encroachment of the Government land. In the present case, as per the averments in the writ affidavit, there was no such notice given under Section 7 of the Act and straight away eviction notice under Section 6 of the Act is given.

Since the said action of the Tahsildar cannot be appreciated, the writ petition is disposed of with the following directions:-

The impugned notice under Section 6 of the Act issued on 05-07-2015 shall be treated as a notice under Section 7 of the Act and thereby entitling the petitioner to submit her

explanation to the Tahsildar viz., the 3rd respondent, who shall thereafter consider the said explanation and then pass appropriate reasoned order either dropping the proceedings against the petitioner or taking appropriate action under Section 6 of the Act. Pending compliance with the above direction, the 3rd respondent shall not enforce the impugned notice and shall not interfere with the petitioner's possession."

No costs.

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

VILAS V.AFZULPURKAR, J

Date: 10-07-2015

Prv

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