

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.29571 OF 2015

ORDER:

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

This Writ Petition is directed against the order, dated 13.07.2015, of the Joint Collector, Visakhapatnam, the 2nd respondent.

The petitioner was directed to be evicted as per the orders of the Tahsildar, Padmanabham Mandal, Visakhapatnam District, the 3rd respondent, in Rc.No.253/2008/SA, dated 07.05.2009, issued under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905. Questioning the same, the petitioner filed an appeal before the 2nd respondent, which was dismissed under the impugned order, dated 13.07.2015.

The only contention raised by learned counsel for the petitioner is that the petitioner was not heard before the appellate authority as he could not appear before him on 20.06.2015. The same was also recorded by the 2nd respondent in the impugned order. Learned counsel, however, states that the Junior Counsel filed his own affidavit on 26.06.2015 explaining the circumstances under which he could not appear on 20.06.2015 and when he reached by 11:30 A.M., by that time the orders were reserved and there was no representation on the side of the petitioner/appellant. The petition seeking reopening of the appeal for advancing oral arguments is stated to be pending with the 2nd respondent since 26.06.2015 and without passing any orders and the impugned orders are stated to have been passed on 13.07.2015. The findings of the 3rd and the 2nd respondents on merits are not canvassed by learned counsel for the petitioner, except contending that in the interests of justice and fairness an opportunity ought to have

been given to the petitioner as the default on 20.06.2015 was merely circumstantial and the same was duly explained in the affidavit of the Junior Counsel.

Learned Government Pleader for Revenue also states that the impugned order is passed on merits only in the absence of the petitioner. However, the interests of justice require that the petitioner be heard especially when the plausible explanation is furnished for his absence. Therefore, due and sufficient opportunity be granted to the petitioner. Hence, I am constrained to set aside the impugned order and remit the matter back to the 2nd respondent with a direction to hear and dispose of the appeal on merits afresh.

Learned counsel for the petitioner undertakes that on the date so fixed by the 2nd respondent, the petitioner shall ensure that his counsel appears and argues the appeal and that he would not seek any further adjournment.

The Writ Petition is, accordingly, allowed and the impugned order is set aside. There shall be no order as to costs.

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

VILAS V.AFZULPURKAR, J

14.09.2015

Note:- Furnish C.C. in three days.

(B/o)

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