

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No. 2319 of 2015

DATE: 06.02.2015

Between:

V. Mani and 21 others

.. Petitioners

and

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

Respondents

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ORDER:-

The petitioners, who are 22 in number, claim to have occupied small extents of government poramboke lands in Sy.No.44-1, situated in Edulagunta village, Appalayagunta Revenue, Srikalahasti Mandal, Chittoor District in 1987-1988 and since then they have been in possession of those lands by erecting huts, brick sheds and roof sheds. While so, it is stated that the 4th respondent-Tahsildar issued them individual notices dated 17.01.2015 under Section 6 of the A.P. Land Encroachment Act, 1905 (for brevity "the Act") directing them to vacate the lands in their possession within two days, otherwise, they will be forcibly evicted. Then, the petitioners submitted a common explanation dated 30.01.2015 stating that the lands in question are not covered under tank bed area and the same are not being cultivated under ayacut of the alleged tank bed and claimed to regularise their possession as the same is tank poramboke. It is also stated that similarly situated occupants of abutting land which was claimed as tank bed by the Government, were issued possession certificates. Now, the petitioners' grievance is that the 4th respondent, without issuing any notice under Section 7 of the Act, and without making any enquiry as to the existence or otherwise of the alleged tank bed with reference to the revenue records and even without considering their objections said to have been submitted on 30.01.2015, is taking steps to dispossess them from their

occupation. Hence, the present writ petition is filed seeking appropriate directions and to set aside the impugned Notices.

The learned counsel for the petitioners has contended that the action of the 4th respondent in trying to dispossess the petitioners from the schedule lands is against the statutory provision contemplated under Section 7 of the Act. He has further submitted that without following the due process of law, mere issuance of notice under Section 6 of the Act does not empower the respondents to evict the petitioners, and prays to set aside the impugned notices while directing the respondents not to take coercive steps to dispossess them from the lands in question.

The learned Government Pleader for Revenue appearing for the respondents has submitted that the lands in issue are tank bed lands and in view of the orders passed by the Apex Court in respect of such nature of lands, a duty is cast on the government to restore the tank bed lands by evicting the encroachers, as such, the very question of consideration of the claim of the writ petitioners on the ground raised by them that the lands are not covered under tank bed area does not arise and the writ petition is liable to be dismissed.

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 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.

Having considered the rival submissions and having regard to the fact that the respondents, without following the due process of law have issued the impugned notice under Section 6 of the Act directing them to vacate the lands in their possession and even no pleading is forthcoming from the respondents that the objections dated 30.01.2015 said to have been filed by the petitioners subsequently are considered, the very impugned notice issued under Section 6 of the Act is bad in law and the same cannot be termed as a speaking order in the eye of law inasmuch as the same is bereft of reasons either valid or non-valid.

Hence, the impugned notices dated 17.01.2015 issued to the petitioners are hereby set aside. However, the respondents are directed to consider the explanation /objections if any, and after considering the common representation / objections dated 30.01.2015 said to have been submitted by the petitioners and passing appropriate orders thereon, issue fresh statutory notices under Section 6 of the Act dealing with those objections and then take necessary action in accordance therewith. It is needless to mention that issuance of notices under Section 6 of the Act cannot be termed as consideration of the objections raised by the petitioners. Till this entire exercise is completed, the petitioners' shall not be evicted/dispossessed from the lands in question."

With the above direction, the writ petition is disposed of.

No order as to costs.

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

CHALLA KODANDA RAM, J

06.02.2015

bcj