

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V.BHATT

-

W.P. Nos.27202, 27042, 27047, 27108, 27217, 27228, 27232, 27276, 27281, 27284, 27302, 27304, 27414, 27415, 27426, 27442, 27514, 27580, 27641, 27715, 27716, 27734, 28063, 28552, 29379, 29436 OF 2009, 68, 84, 93, 97, 737 AND 756 OF 2010.

-

PC: (per Hon'ble Sri Justice S.V.Bhatt)

Heard learned counsel Mr.S.Niranjan Reddy, Mr.T.S. Praveen Kumar and Mr.C.V. Bhaskaer Reddy for the parties.

In the batch of writ petitions, the petitioners are assailing the notice under Section 6 of the A.P. Land Encroachment Act,1905 (for short 'the Act').

The learned counsel for the parties submit that the facts and circumstances in the batch of writ petitions are substantially same and similar. For convenience, the circumstances stated in W.P.No.27202 of 2009 are referred to.

The averments in brief are that the Tahsildar, Nirmal issued notice No.A/17840/2009 dated 12.11.2009 under Section 7 of the Act calling upon the petitioner to offer explanation against the alleged illegal occupation of Khandak Abadi of Nirmal town. On 26.11.2009, the petitioner claims to have submitted explanation to the show cause notice dated 12.11.2009. On 04.12.2009, the impugned notice calling upon the petitioner to remove erection was issued.

Learned counsel appearing for the petitioner contends that the impugned notice under Section 6 of the Act is illegal and the notice has been issued without considering the explanation submitted by the petitioner or conducting enquiry into the matter much less affording opportunity to the petitioner. According to petitioner, there are serious issues of title and possession in the matter and there cannot be assumptions resulting in eviction order. Learned Government Pleader submits that the notice impugned in the writ petition if treated as order, the same is appealable

under Section 10 of the Act and the writ is not maintainable. The petitioner without availing the remedy of appeal ought not to have invoked the jurisdiction of this Court under Article 226 of the Constitution of India. The learned Government Pleader, however, submits that before issuing the impugned notice, the Tahsildar, Nirmal, ought to have passed order and thereafter issued notice under Section 6 of the Act calling upon the petitioner to remove encroachment.

We have perused the material on record and taken note of the submissions of parties.

While serving the impugned notice, the procedural requirement of consideration of explanation and conducting enquiry if necessary, in our considered view are not followed by the Tahsildar, Nirmal/respondent No.4. The non-consideration of material available on record and the explanation submitted by the petitioner certainly vitiated the notice under Section 6 of the Act. We are satisfied that without relegating the petitioner to the remedy of appeal, to meet the ends of justice and to afford reasonable opportunity, the writ petition can be disposed of by this order.

The notice under Section 6 of the Act is set aside. The Tahsildar, Nirmal is directed to consider the explanation of petitioner(s) in accordance with law by affording opportunity to the petitioner within a period of six months from today. The petitioner is given four weeks more from today to file additional explanation, if any, together with documents against the show cause notice dated 12.11.2009. The petitioner is directed to produce a copy of this order before the Tahsildar, Nirmal within two weeks from today for expeditious action. The interim order shall remain in force till the notice is decided as directed by this Court within the stipulated period.

The writ petition is ordered as indicated above. The other writ petitions are ordered on the same lines.

In W.P. Nos.68 and 93 of 2010, the petitioners have filed appeals under Section 10 of the Act against the notice issued under Section 6 of the Act. The appellate authority while confirming the notice under Section 6 of the Act, dismissed the

appeals. As the very issuance of notice under Section 6 of the Act is found to be defective, we are satisfied that these two petitions are also ordered in the same terms as other writ petitions and the matters are remanded to respondent No.4 for consideration along with other cases in the batch.

It is made clear that we are not expressing any view on the merits and it is for the Tahildar, Nirmal to examine and pass appropriate orders in accordance with law.

Consequently, miscellaneous petitions, if any pending in these writ petitions, also stand disposed of.

DILIP B.BHOSALE, ACJ

S.V.BHATT,J

Date:29.10.2015

Stp