

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 8738 and 8796 of 2015

COMMON ORDER:

The petitioners in these writ petitions question the action of the 2nd respondent-Tahsildar in trying to evict them by issuing Notices dated 31.01.2015 and 16.02.2015 under Section 6 of the A.P. Land Encroachment Act, 1905 (for short, 'the Act'). The issue in both these writ petitions being similar, they are being disposed of by this common order.

2. It is the common case of the petitioners that they are absolute owners and possessors of different extents of lands in Survey Nos.1920-A1 and 1920-B1 of Kavali village and mandal, SPSR Nellore district, and they are residing in their respective lands by constructing houses. Through the impugned notices, the 2nd respondent-Tahsildar sought to evict the petitioners alleging encroachment into Government land. It is stated in the impugned notices that as per the Re-Survey and Re-Settlement Register, Survey No.1920 of Kavali village was classified as 'tank poramboke', and later the land came to be sub-divided as Survey Nos.1920-A1, 1920-A2, 1920-B1 and 1920-B2, and the petitioners have encroached the land which is classified as tank in the revenue records. When the 2nd respondent-Tahsildar issued notices under Section 7 of the Act, some of the petitioners approached this Court by filing W.P.No.40672 of 2014. This Court, by order dated 30.12.2014, disposed of the writ petition by directing the Tahsildar to conduct enquiry and pass final orders, and further directed the Tahsildar not to act on the final orders till the expiry of time for preferring an appeal. The petitioners allege that the impugned notices were issued without considering their explanation and without proper enquiry and the respondent authorities are trying to evict them.

3. Learned counsel for the petitioners submits that the 2nd respondent has not considered the explanation submitted by the petitioners in proper perspective and, without conducting enquiry, has issued the impugned notices seeking to evict the petitioners.

4. Learned Assistant Government Pleader submits that, against the impugned eviction notices under Section 6 of the Act, the petitioners have an alternative remedy of appeal, and hence the petitioners may be relegated to the remedy of appeal.

5. Law amply mandates issuance of a notice under Section 7 of the Act calling for explanation from the encroacher; and in case the authorities are not satisfied with the explanation, then a notice under Section 6 of the Act stipulating a time limit for vacating the encroachment has to be issued; and if the encroacher fails to vacate within the time stipulated, then the authorities can evict him. While considering the explanation of the encroacher, the respondent-authorities are required to objectively consider the objections including the nature of occupation, the length of time under the occupation of the encroacher etc. In case there is an element of dispute in relation to the title, summary procedure contemplated under the Act cannot be instituted, as the Act is not a short-cut for deprivation of a citizen's undisputed possession over a long period. In such cases, the proper remedy would be to approach the Civil Court for recovery of possession. All the above elements are required to be reflected by way of a Speaking Order under Section 6 of the Act. It is only thereafter, by putting on notice, a person can be asked to vacate the land and, in the process, specify a reasonable time for doing so. Though procedure contemplated for eviction under the Act is somewhat summary, the same is not intended to short-circuit the whole procedure prescribed under and read into the Act by the Courts.

6. In view of the alternative remedy of appeal available against the impugned eviction notices, and as held by this Court in W.P.No.2300 of 2015, that any precipitate action, even before the expiry of time for preferring appeal against impugned orders, would only make the appeal provision otiose, it would be in the fitness of things to suspend the impugned notices, and give liberty to the petitioners to approach the appellate authority by way of filing an appeal against the impugned notices and also file an application seeking stay of eviction.

7. Accordingly, the writ petitions are disposed of, giving liberty to the petitioners to approach the appellate authority by filing an appeal, along with an application seeking stay of eviction. As and when such appeal is filed, the appellate authority shall pass appropriate orders, in accordance with law, either in the stay application or preferably the appeal itself, as expeditiously as possible, preferably within a period of four months from today. Till appropriate orders are passed in the stay application or the appeal, whichever is earlier, the impugned notices shall stand suspended. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

31st March, 2015

ksm