

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 20215 OF 2015

ORDER:

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With the consent of both the parties, the writ petition is disposed of at the admission stage itself.

The present writ petition is filed questioning the action of the fourth respondent in issuing notice dated 30.05.2015 for evicting the petitioner from the asbestos roofed house bearing D.No.11-270 situated at Sirinagar, Kanuru, Vijayawada, Krishna District as arbitrary and illegal.

The averments in the writ petition are as under:

The petitioner is the absolute owner of house bearing No.11-270 situated in Sy.No.220/B, at Sirinagar, Kanuru, Vijayawada. Originally, the said property was acquired by the husband of the petitioner and after the death of her husband, she inherited the same. It is said that the petitioner is in continuous possession and enjoyment of the said house since 1979 and the name of the husband of petitioner also entered in the revenue records. The petitioner is also paying the property tax to the Gram Panchayat since 35 years and the gram panchayat allotted assessment No.943. Electricity Department also issued electricity connection to the said house vide connection No. 6521201012740. Earlier, the petitioner was served with a notice dated 30.05.2015 stating that she is in illegal occupation of the land at Door No.11-270 and the same has to be vacated immediately. Questioning the same, the petitioner approached this Court by way of filing W.P.No.14939 of 2015.

By an order dated 21.05.2015, this Court directed respondent Nos.2 to 4 not to demolish the property of the petitioner pursuant to the notice dated 27.02.2015 issued by the third respondent without following the due process of law. Now, the fourth respondent again issued notice on

30.05.2015 under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short "the Act") and consequential notice under Section 6 of Act 3 of Madras Act, 1905 dated 29.05.2015 and made an attempt to demolish the house on 01.07.2015. Hence, the petitioner again approached this Court by filing the present writ petition.

Heard learned counsel for the petitioner and learned Government Pleader.

Learned counsel for the petitioner submits that in the earlier notice dated 27.02.2015 the third respondent stated that the property belongs to the Irrigation Department and in the present notice it is stated that it is government land. She further submits that on 02.07.2015 the petitioner filed a statutory appeal under Section 10 (2) of the Act before the Revenue Divisional Officer and the same is pending consideration. It is submitted that though the writ petitioner is having a legal right over the property, the respondents are high handedly trying to demolish the premises.

A perusal of the notice dated 29.06.2015 show that the petitioner has to vacate the premises within two days from the date of the notice, failing which the authority cautioned of taking coercive steps for vacating the premises. This Court has been constantly noticing that while passing eviction orders, the primary authorities (Tahsildars concerned) are not granting reasonable time to the aggrieved parties for vacation of the premises and the appellate authorities are not passing orders on the interlocutory applications, filed seeking stay of interim orders. As a result of this lack of rational approach on the part of the primary as well as the appellate authorities, the legal remedy of appeal and revision are at times rendered otiose.

Since the appeal and the stay application filed by the petitioner under Section 10 (2) of the Act are pending, it is appropriate to direct the fourth respondent not to take any coercive steps against the petitioner

either till the disposal of the appeal or the stay application whichever is earlier. The authority shall take all steps to dispose of the appeal/stay application filed by the writ petitioner within a period of four (04) weeks from today.

With the above direction, the writ petition is disposed of. No costs.

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

JUSTICE C. PRAVEEN KUMAR

03.07.2015
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