

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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WRIT PETITION No.37198 of 2015

ORDER:

The present Writ Petition is directed against order in proceedings No.C/2835/2013, dated 13.11.2015 passed by the fourth respondent under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act') for eviction of the petitioner from open land with a small structure, in an extent of Acs.40.00 guntas covered by GLR Sy.No.243 of Cantonment Area, Tirumalagiri Mandal, Hyderabad.

Prior to the passing of the impugned order, the petitioner was given show cause notice, dated 01.11.2013 under Section 7 of the Act. Thereupon, the petitioner filed reply and he was also given opportunity of personal hearing and thereafter, the impugned order is passed inter *alia* holding that the land forms part of GLR Survey No.243 belonging to the State Government and the petitioner is in illegal occupation of the subject land.

Learned Senior Counsel for the petitioner questions the impugned order on various grounds including the ground of lack of jurisdiction of respondent No.4 on whether the subject land falls in Hyderabad District or Ranga Reddy District basing on its identity as well as location and that the provisions of the Act ought not to have been applied, as per the decision of the Supreme Court in **Government of Andhra Pradesh v. Thummala Krishna Rao and another**.

Per contra, learned Government Pleader submits that the impugned order was passed by the fourth respondent duly considering the contentions raised by the petitioner in its reply and it is in accordance with the finding already recorded in favour of the Government in the Writ Petition as well as the Writ Appeal and that the Wakf Tribunal in its judgment categorically held that the land in GLR Survey No.243 belongs to the State Government. He therefore justifies that the impugned order is a reasoned order and it does not call for any interference by this Court.

It is not disputed by the learned Senior Counsel for the petitioner that the order, which is impugned in this Writ Petition, is appealable under Section 10 of the Act and the petitioner has a remedy of appeal before the appropriate authority where

it can question the impugned order on all available grounds. There is no reason why the petitioner should not be relegated to the appellate remedy available to it under the Act.

It is however the grievance of the petitioner that the impugned order is being executed today itself without there being sufficient time for it to avail the appellate remedy. It is stated that the impugned order was passed and served on the petitioner on 13.11.2015 and 14th and 15th November, 2015 were Second Saturday and Sunday, it has moved this Writ Petition today by way of a lunch motion but showing undue haste, the impugned order is sought to be implemented by the fourth respondent through the Revenue Inspector.

The learned Government Pleader has placed before the Court a copy of panchanama stated to have been conducted by the fourth respondent today morning purporting to have taken over the possession of the land covered by the impugned order, which is disputed by the learned Senior Counsel for the petitioner. It is evident from the notice issued under Section 7 of the Act as well as the averments of the petitioner that firstly, the subject land is only open land which is to be divided into plots and as such hardly any structures exist on the said open land. Admittedly, the petitioner is in possession thereof till the alleged panchanama of today morning.

Hence, keeping in view all these aspects and fairness in actions of Governmental authorities, in my view, there is no reason why status quo existing as on today pursuant to the impugned order should not continue to enable the petitioner to approach the appellate authority and seek appropriate further orders from the appellate authority.

Hence, the Writ Petition is disposed of permitting the petitioner to avail the appellate remedy as mentioned above against the impugned order, which shall remain stayed for a period of four weeks, during which, the petitioner shall avail the appellate remedy and seek appropriate further orders from the appellate authority. The possession of the land said to have been taken by the fourth respondent under the panchanama as recorded above shall be re-delivered to the petitioner subject to the condition that it shall not alienate or alter the subject land. This however shall be subject to further orders of the appellate authority.

Miscellaneous Petitions, if any pending in this Writ Petition shall stand

closed. No order as to costs.

VILAS V.AFZULPURKAR, J

16th NOVEMBER, 2015.

Note: issue c.c. tomorrow.

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