

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH**

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WRIT PETITION Nos.29092 and 31221 of 2015

BETWEEN

Shaik Bachha Saheb.

... PETITIONER

AND

The State of Andhra Pradesh, rep. by its Principal Secretary, Roads & Buildings, Secretariat, Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 28.09.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

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COMMON ORDER:

Heard the learned counsel for the petitioner and learned Government Pleader for Revenue, who has already received instructions in the matter.

2. This case illustrates that the Tahsildar, Tadikonda Mandal and the Revenue Divisional Officer, Guntur are taking action under the A.P. Land Encroachment Act (for short 'the Act') without having any regard to the provisions thereunder and perhaps, the District collector, Guntur must undertake a refresher course to train the aforesaid officers as to the manner in which the provisions of the Act are to be applied and enforced by following the procedure prescribed thereunder. This Court is constrained to make the aforesaid observations in view of the facts revealed in these two writ petitions as under.

3. WP.No.29092 of 2015 was filed by the petitioner questioning the order passed by the seventh respondent viz. Tahsildar, Tadikonda Mandal dated 05.08.2015 under Section 6 of the Act directing eviction of the petitioner within seven days from an extent of Ac.0.42 cents of land in Sy.No.236/2 of Ravella village on the ground that the said land is road poramboke and that petitioner has constructed an RCC house. Since the said order was clearly unreasoned, when the matter came up for hearing on 08.09.2015, this Court while issuing notice before admission directed status quo to be maintained for a period of three weeks. This Court also observed that apart from the said order dated 05.08.2015, the very same Tahsildar issued another order in Rc.DT/260/2015 dated 31.08.2015 again under Section 6 of the Act directing eviction of the petitioner after considering the explanation given by the petitioner and rejecting the same. Meanwhile, petitioner filed an appeal before the RDO, Guntur on 10.08.2015 against the said order dated 05.08.2015.

4. Though this Court directed status quo to be maintained,

as noted above, the RDO dismissed the appeal under his proceedings Rc.No.3653/2015-K dated 15.09.2105 and directed the Tahsildar, Tadikonda Mandal to act accordingly. Petitioner has, therefore, questioned the said order of the RDO in WP.No.31221 of 2015, referred to above. Both the writ petitions are heard today.

5. Learned counsel for the petitioner contends that there cannot be two orders under Section 6 of the Act, which are impugned in WP.No.29092 of 2015 and more so, during the pendency of the writ petition, the RDO could not have passed the order dated 15.09.2015 impugned in WP.No.31221 of 2015.

6. Learned Government Pleader states, on instructions, that the Tahsildar passed the order dated 05.08.2015 directing eviction and on 31.08.2015, the Tahsildar has passed a reasoned order under Section 6 of the Act. Learned Government Pleader also states that the order impugned in WP.No.31221 of 2015, passed by the RDO, is stated to be only a draft order wrongly communicated as a final order.

7. I am unable to accept any of the said contentions of the learned Government Pleader, as the Tahsildar cannot pass an eviction order under Section 6 of the Act and thereafter, cannot again pass a further order under Section 6 of the Act by describing it as a reasoned order. As per the scheme of the Act, the Tahsildar is required to first issue a notice under Section 7 of the Act by permitting the alleged encroacher to submit his explanation and the said explanation is required to be considered and a reasoned order is required to be passed under Section 6 of the Act either directing eviction or for dropping the proceedings. The present case, however, discloses that the Tahsildar has passed eviction order on 05.08.2105 and then tried to supplement it by passing a reasoned order on 31.08.2015. Neither of the said order of the Tahsildar, therefore, can be sustained. Further, without realizing the aforesaid defects in the said two orders, the RDO proceeds to dismiss

the appeal filed by the petitioner under order dated 15.09.2015, which is impugned in WP.No.31221 of 2015, which is also contrary to the status quo order passed by this Court, referred to above.

8. In these circumstances, therefore, the orders of the Tahsildar dated 05.08.2015 and 31.08.2015, referred to above, cannot be sustained and are accordingly set aside. Consequently, the order of the RDO dated 15.09.2015, impugned in WP.No.31221 of 2015, is also unsustainable and accordingly set aside. This will, however, not preclude the Tahsildar to follow the due process under the Act and if the Tahsildar intends to take action against the petitioner, he shall issue notice under Section 7 of the Act to the petitioner giving him opportunity to submit explanation, consider the explanation and then pass a reasoned order if eviction is warranted.

The writ petitions are accordingly allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

September 28, 2015
DSK