

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.7558 of 2015

ORDER:

This writ petition is filed by the petitioner questioning the action of the 4th respondent in issuing the impugned proceedings No.B/3892/2012, dated 17-03-2015 ordering to evict the petitioner from the possession and enjoyment of house bearing No.6-2-109/1, admeasuring 250 Sq. yards in Sy.No.535, which is part and parcel of M/s.Venkateshwara Saw Mill and Timber Depot at Mahabubabad Municipality and Mandal, Warangal District, as illegal, arbitrary and against the principles of natural justice and consequently direct the respondents not to evict the petitioner from the possession of the above house property without giving notice and opportunity to the petitioner and also without following due process of law.

It is the case of the petitioner that originally the father of the petitioner by name Late Thakur Ashok Singh and his brother Thakur Kishore Singh purchased the houses bearing Nos.6-2-109 and 6-02-109/1 total admeasuring 2203 Sq. yards in Sy.No.535 at Mahabubabad by way of registered sale deed document No.4971/1982, dated 05-10-1982 and document No.5096/1982, dated 12-10-1982 respectively and they also got mutated their names in the Grampanchayat records as the owners of house Nos.6-2-109 and 6-2-109/1 and they have been running a Saw Mill and also a Timber Depot under the name and style of M/s.Venkateshwara Saw Mill. It is further submitted that while the matter stood thus the other legal heirs of late Ashok Singh and

Thakur Singh executed the registered relinquishment deed vide document No.4420/2013, dated 24-06-2013 relinquishing 250 Sq. yards out of 1098 Sq. yards which is part and parcel of house No.6-2-109/1 covered by the original registered sale deed document No.5096/1982 in favour of the petitioner and accordingly the petitioner obtained construction permission from the Mahabubnagar Municipality and constructed the house thereon in terms of the plan approved by the Municipality. While so, again the respondents started to disturb the possession of the petitioner and the same is resulted in filing W.P.No.37719/ 2014 and this Court disposed of the said writ petition by order, dated 21-01-2015 directing the respondents to conduct survey after giving notice to the petitioner and demarcate the land in Sy.No.535 and than only the respondents shall have to take further action against the petitioner. No notice whatsoever was given by the respondents for conduct survey of land and also without giving any notice and opportunity issued the impugned proceedings, dated 17-03-2015 under Section 6 of the Land Encroachment Act, 1905 (for short, 'the Act') directing the 5th respondent to evict the petitioner from his house and take over the possession of the same under the cover of panchanama. Hence, the writ petition.

Heard Sri M. Damodar Reddy, learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue.

Learned counsel for the petitioner submits that he has not been served any notice and in similar circumstances this Court

had granted stay of dispossession in W.P.No.29275 of 2009.

Having perused the impugned order prima facie the contention of the petitioner cannot be accepted that no notice was issued to the petitioner as the very impugned order refers that notice has been issued to the petitioner on 26-02-2015 and the petitioner had not submitted any explanation.

In view of that, the order, dated 17-03-2015 is an order passed in exercise of power under Section 6 of the Act as against which appeal is provided under Section 10 of the Act to the Revenue Divisional Officer within 60 days.

By impugned proceedings, dated 17-03-2015 the Tahsildar has directed Mandal Revenue Inspector, Mahabubabad to take possession by evicting the petitioner. If eviction is implemented the very right of the petitioner's appeal becomes illusory and in that view of the matter, till preferring of appeal by the petitioner there shall be stay of the impugned order, dated 17-03-2015. Before the appellate authority the impugned order deserves to be kept in abeyance.

Liberty is given to the petitioner to approach the appellate authority within ten (10) days from today and seeking stay of impugned order. Till such time either the stay petition or the revision petition, whichever is earlier, is disposed of, the petitioner shall not be dispossessed from his possession.

With the above directions, the writ petition is disposed of.

Miscellaneous Petitions, if any pending in this writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

March 23, 2015

*Note: Issue C.C. in
two days. B/o.PN*

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