

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.5458 of 2015

Oral Order:

The petitioners challenge notice No.B/W.274/I/Land dated 12.1.2015 issued in Form-A of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 (for short “the Act”).

The notice refers to unauthorized occupation by the petitioners of small extents of land in Sy.No.2048 of Nellore Bit-I Village as illegal without jurisdiction and unconstitutional. Having taken note of the averments in the affidavit, this Court through order dated 6.3.2015 directed maintenance of status quo as regards possession of the petitioners vis-à-vis the property covered by the respective notices and further directed the Revenue Divisional Officer, SPSR Nellore District and the Tahsildar, Nellore Mandal, SPSR Nellore District, respondents 3 and 4 respectively, to inspect the subject matter of the writ petition, localize the area for which possession certificates are issued and the land claimed by Railways in Sy.No.2048 and place the report of survey/inspection. The 4th respondent has placed on record the report dated 2.4.2015 and the relevant portion of the report is as follows :

“ ...I submit that after verification of ground realities, it is noticed that the petitioners have encroached certain portion of the land in R.S.No.2052 of Nellore Bit-I Village, raised temporary/permanent structures and residing therein since several years. According to survey records available with Revenue department and records maintained with Railways the land measuring Acs.13.90 covered by R.S.No.2052 has been classified as “Railway Track Poramboke” vested with Railways Department. I

submit that Railway Track is passing in the middle of Sy.No.2052. The encroachments held by the petitioners in the said survey number are parallel to the Railway Track passing through R.S.No.2052. The distance between the Railway Track and the existing encroachments will be around 25 to 30 meters. I submit that no possession certificates were issued in favour of the petitioners in respect of encroachments held by the petitioners in R.S.No.2052, as the land in R.S.No.2052 vests with Railways.

I submit that in the year 2008, while issuing possession certificates to the Petitioners Sy.No. of the land under the encroachment of the petitioners was noted as R.S.No.2049-D and pattas were issued erroneously while in fact the encroachments held by the petitioners were in R.S.No.2052. I submit that according to Revenue records the land in R.S.No.2049-D has been classified as Government land wherein a residential layout is located. The petitioners herein are not residing in the said layout in R.S.No.2049-D.

...

.... according to material filed by the petitioners notices were issued by the Railway Authorities in Form A for eviction of petitioners from the land in C.A.S.Nos.589 & 590 and R.S.Nos.2048 and 2050 of Nellore Bit-I. According to diglot the details of the land covered by the above C.A.S & R.S.Nos. for which notices were issued are as follows :

Sl.No.	C.A.S/R.S.No.	Extent in Acs.	Classification
1	589	1.39	Flag Station Road
2	590	3.45	Railway land

3.	2048	5.88	Government land
4	2050	5.30	Government Land

The report discloses that the Railways owns land covered by R.S.No.2052 and a track is passing through R.S.No.2052. The property in possession of the petitioners is at a distance of 25 to 30 meters on either sides of the track passing through R.S.No.2052 but not R.S.No.2048 as stated in the notice.

From the above narration, it is clear that issuance of notice under the Act suffers from lack of territorial jurisdiction as notice under the Act can be issued if the schedule of the property covered by the notice is the property belonging to Railways. On this short ground, the notice impugned in the writ petition is set aside. The respondents are at liberty to initiate action if the circumstances so warrant against the encroachments in R.S.No.2052 of Nellore Bit I Village in accordance with law and pass appropriate orders after affording opportunity to the encroachers.

The writ petition is ordered accordingly.

Pending miscellaneous petitions, if any, shall stand closed in consequence. No order as to costs.

JUSTICE S. V. BHATT

Dated : 28.4.2015

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