

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No. 5049 of 2015

DATE: 03.03.2015

Between:

M/s. Dandamudi Bio-Tech Private Limited .. Petitioner

And

1. The State of A.P.
2. The Revenue Divisional Officer
3. The Tahsildar .. Respondents

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ORDER:-

The petitioner-M/s.Dandamudi Bio-Tech Private Limited, represented by its In-charge Director, claims to be absolute owner, possessor and enjoyer of an agricultural land admeasuring Ac.17.00 cents in Sy.No.266/2A situated in Singagudem village, Lingapalem Mandal, West Godavari District by virtue of a registered sale deed dated 03.10.2008. While so, it is stated that the 3rd respondent-Tahsildar issued notice dated 30.01.2015 under Section 7 of the A.P. Land Encroachment Act, 1905 (for brevity "the Act") and without giving an opportunity to put forth its version, issued another notice dated 08.02.2015 under Section 6 of the Act stating that the land is Government Assessed Waste Land and directed the petitioner to vacate the land covering an extent of Ac.1.00 cents out of Ac.17.00 cents in Sy.No.1 of the same village on the ground that the petitioner has encroached the Government land. In response to the notices, the petitioner submitted explanation on 14.02.2015 stating that the land under occupation of the petitioner is private land and the land alleged to have been encroached is covered in Sy.No.266/2A, and if it is felt necessary, the authorities may conduct survey and demarcate the boundaries for the lands covered in both the survey numbers. Now, the petitioner's grievance is that the 3rd respondent, without considering its objections /

explanation, is threatening to evict the petitioner from the land in question. Hence, the present writ petition is filed seeking appropriate directions.

The learned counsel for the petitioner-firm, while relying on the judgment of this Court in W.P.No. 2319 of 2015, dated 06.02.2015, submits that under law there is requirement of a reasoned order to be passed which is an appealable order. In that view of the matter, the order passed under Section 6 suffers from legal infirmity as the same is not a speaking order. He further submits the aspects of issuance of impugned notice under Section 6 of the Act, which is not a speaking order and the non-consideration of the specific objections raised by the petitioner are in utter violation of principles of natural justice, a mandatory requirement.

The learned Government Pleader for Revenue appearing for the respondents submits that an appeal lies against the notices under challenge as provided under the Act, as such, the petitioner may be directed to approach the appellate authority for redressal of its grievance.

Heard the learned counsel for both the parties and perused the material placed on record.

A careful perusal of the Notice dated 08.02.2015 issued under Section 6 of the Act leaves no manner of doubt that the same is a non-speaking order and in a printed form. This Court, in W.P.No. 2319 of 2015, dated 06.02.2015 had clearly dealt with the necessity of a reasoned order to be passed in cases where properties / lands belonging to the Government are alleged to have been encroached. In such circumstances, the writ petition deserves to be allowed to the

following extent.

“The notice issued under Section 6 of the Act, which is not in the form of final / reasoned order, is hereby set aside. However, liberty is given to the 3rd respondent to pass a reasoned order after considering the objections said to have been filed by the petitioner on 14.02.2015 and also affording an opportunity of being heard. Inasmuch as the dispute being a non-speaking order, the 3rd respondent while passing a speaking order may consider the desirability of taking the aid of survey officials for the purpose of ascertaining the fact whether the subject land is covered in either Sy.No.1 or Sy.No.266/2A as claimed by the petitioner. It is made clear that costs that may be incurred for the purpose of conducting survey shall be borne by the petitioner”.

The writ petition is allowed to the extent indicated above. No order as to costs.

As a sequel to the allowing of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

CHALLA KODANDA RAM,

J

03.03.2015

bcj