

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 20154 OF 2015

ORDER:

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With the consent of both the parties, the writ petition is disposed of at the admission stage itself.

The present writ petition is filed questioning the action of the third respondent in issuing notice dated 29.06.2015 evicting the petitioners from their shops as arbitrary, illegal, unjust, unconstitutional and violative of principles of natural justice.

The averments in the writ petition are as under:

The petitioners are residents of Badvel Town and are eking out their livelihood by doing petty business such as Goldsmith, Barber, Chicken Shop, Fancy Store, Cloths Store, Tiffin Center, Electric Mechanic, Readymade shop, teal stall, soda bunk, cell point, bakery, press and petty provisional stores since several decades and some of the petitioners have inherited the business from their ancestors. The said shops to an extent of 7 x 20 feet were constructed in R & B Poramboke land on Badvel-Siddoutam Road touching the RTC compound wall on the eastern side. It is stated that the Badvel-Siddoutum road is a spacious road with a width of 34 feet on each side with a divider in the middle of the road. Earlier, the petitioners were served notice by the Assistant Engineer (R & B), Badwel, demanding them to remove the encroachment within 15 days. Questioning the same, the petitioners approached this Court by way of filing W.P.No.36363 of 2014. Initially this Court granted stay of dispossession. On receipt of notice under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short "the Act"), the petitioners furnished their explanations to the Tahsildar on 31.12.2014. It is stated that initially the petitioners are paying property tax to the

Madakalavaripally Gram Panchayat and after inclusion of the said Panchayat into Badvel Municipality they are paying municipal tax since 2006 till date.

By an order dated 08.06.2015, this Court allowed a batch of writ petitions and the operative portion of the order is as under:

“In view of the above facts and circumstances of the case, the writ petitions are allowed, declaring the general notice dated 13.10.2014 issued by the Assistant Engineer, Roads and Buildings, Badvel, YSR Kadapa District as illegal, without jurisdiction and unsustainable. However, it is open for the authorities to proceed in accordance with law pursuant to individual notices dated 26.12.2014 said to have been issued by the third respondent and take appropriate action. It is also made clear that if no such notices are served, fresh notices shall be served on the petitioners herein and to proceed in accordance with law, after giving opportunity to the petitioners.”

After disposal of the writ petitions, the petitioners were served with an undated notice and number, directing the petitioners to vacate the premises within a period of seven days, failing which they would be sent out forcibly. Hence, the petitioners again approached this Court by filing the present writ petition.

Heard learned counsel for the petitioners and learned Government Pleader.

Learned counsel for the petitioners submits that the notice is ex-facie illegal as the same does not contain the date as to when it was issued. She further submitted that all the notices are cyclostyled and are being passed against all the shops which indicate non-application of mind by the authorities.

On the other hand, the learned Government Pleader submits that Section 10 of the Act provides for a statutory appeal and without availing the said remedy the question of filing a writ petition directly before this Court would not arise.

The material on record discloses that earlier the petitioners filed W.P.Nos. 33940, 35801 and 36363 of 2014 assailing the action of the Assistant Engineer, Roads and Buildings, Badvel, YSR Kadapa District in attempting to demolish the shops of the petitioners in pursuance of the general notice dated 13.10.2014. Initially this Court granted stay of dispossession and subsequently allowed the writ petitions on 08.06.2015. While allowing the writ petitions this Court directed the authorities to proceed in accordance with law, pursuant to an individual notice dated 25.12.2014 said to have been issued the third respondent. It is made clear that if such notices are not served, fresh notices shall be served on the petitioners and to proceed in accordance with law. Subsequent to the passing of the order on 08.06.2015, the impugned order came to be issued on 29.06.2015 though the notice under Section 7 of the Act was issued on 26.12.2014 and the explanation to the said notice were submitted on 31.12.2014 itself.

It is to be noted that as per Section 10 of the Act, an appeal shall lie to Collector from any decision or orders passed by a Tahsildar or Deputy Tahsildar under this Act and the said appeal has to be filed within the time fixed under the Act. Since the statute provides for an appeal to the District Collector against an order passed by the Tahsildar, it is not permissible for this Court to entertain the writ petition directly under Article 226 of the Constitution of India. As seen from the proceedings, while passing eviction orders, the primary authority (Tahsildar concerned) has not been granted reasonable time to the aggrieved parties for vacation of the premises. As a result of this lack of rational approach on the part of the primary authorities, the legal remedy of appeal is at times rendered otiose. Since the statute provides a remedy of filing an appeal within a particular period of time, the petitioners shall approach the concerned within the time fixed and make an application for stay of the impugned order, which shall be disposed of within a period of ten (10) days from the date of filing of

application. Till the disposal of the stay application or the appeal, whichever is earlier in point of time, the notice under challenge shall stand suspended.

With the above direction, the writ petition is disposed of. No costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

03.07.2015
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