

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.27458 of 2009

ORDER:

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Heard learned counsel for the petitioner and the learned Government Pleader for Revenue and Assignment.

The present writ petition came to be filed seeking to declare the orders passed by the third respondent vide proceeding Nos.B/15404/2004, C/15404/2004, dated 02.12.2009 in evicting the petitioner from the land admeasuring Ac.0.05 ³/₄ guntas in Survey No.31 situated at Bhukthapur Revenue Village, Opposite to Collectorate Office, Vidyanagar, Adilabad District, even though the land was allotted to him in the year 1990 by the respondents themselves under the scheme of Rehabilitation of Surrendered Extremists, as illegal and arbitrary and consequently direct the respondents not to evict the petitioner from said land.

The averments in the writ petition are as under:

The petitioner was previously connected with extremists activities and when the Government gave a call inviting the extremists to the main stream, the petitioner surrendered before the Superintendent of Police, Adilabad on 31.07.1990. Immediately thereafter, the Superintendent of Police took up the rehabilitation process and recommended the name of the petitioner to the District Collector on 12.08.1990 for providing rehabilitation measures. The respondents identified the land opposite to the Collectorate office and allotted an extent of 886 Square Yards. The petitioner was permitted to construct a house and workshop in the above said land and a No Objection Certificate was also issued by the Municipal Council, Adilabad for running the work shop. The said shop was registered under the Andhra Pradesh Shops and Establishment Act vide registration No.8/II, dated 10.02.1993 issued by the Assistant Labour Officer, Adilabad. The Municipality, Adilabad also issued special notice of property tax, new assessment/amendment on 28.03.1991 in the name of the petitioner by giving house number to the above said property. While things stood thus, the Mandal Revenue Officer, Adilabad, vide his proceedings dated 04.01.1993 issued a memo directing the petitioner to produce relevant records with regard to surrendering and according permission for construction of the house.

On receiving the same, the petitioner appeared before respondent Nos.2 and 3 and produced all the required documents and also requested respondent No.2 to issue patta certificate in his favour in respect of the said land. Thereafter respondent No.2 is said to have issued a memo dated 29.09.2009, directing the petitioner to give explanation with regard to the construction of the house and also directed him to produce documentary evidence. The petitioner submitted the explanation, but, since respondent No.2 started taking steps to dispossess the petitioner from the land by issuing a memo, the petitioner filed W.P.No.24245 of 2009 before this Court. Thereafter, the respondents issued a notice to the petitioner under the Land Encroachment Act (for short, 'the Act'), calling upon the petitioner to explain as to why he should not be evicted from the land. The petitioner submitted an explanation on 26.11.2009 requesting the authorities not to evict him from the said land as he was rehabilitated in the year 1990 itself under the Scheme. Without considering the explanation given and without conducting any enquiry, it is stated that the impugned order came to be passed directing the authorities to evict the petitioner from the land. After receiving the impugned order, the petitioner preferred an appeal before respondent No.1 along with stay application on 11.12.2009. As the respondent authorities are threatening to evict the petitioner from the land, even though the appeal is pending before respondent No.1, the present writ petition came to be filed challenging the order dated 02.12.2009.

On 16.12.2009, this Court, While issuing *rule nisi*, ordered *status quo* as on that date to be maintained until further orders with regard to the possession. Thereafter, respondent No.3, who is Tahsildar, filed a counter denying the allegations made except those which are specifically admitted by him. According to him, earlier this Court in W.P.No.24245 of 2009, directed respondent No.2 to consider the explanation given by the petitioner and pass orders and also directed to take appropriate action for removing the encroachment, if any. It is thus alleged that the petitioner has no right to squat on the public property by taking shelter under the order. It is further stated that the appeal filed by the petitioner before the authorities is also disposed of with a direction to approach the Revenue Divisional Officer, Adilabad, and that the allegation of pendency of appeal is also incorrect. Since the land could not be utilized for the construction of District Registrar's Office, in view of the interim orders passed by this Court on 16.12.2009, he seeks dismissal of the writ petition.

A perusal of the material placed before the Court would show that on 02.12.2009, the Tahsildar, Adilabad, ordered eviction of the petitioner from the Government land within three (03) days, failing which suitable action to be taken against him. Pursuant thereto, the petitioner preferred an appeal before the Collector under Section 10 (1) of the Act, challenging the said order. As no stay was granted, pending the appeal before the Collector, the petitioner approached this Court challenging the original order. By an order dated 16.12.2009, this Court granted *status quo*. Now, the proceedings before the District Collector are not pending. By an order dated 09.09.2015, the District Collector disposed of the appeal directing the petitioner to avail the opportunity of appeal before the Revenue Divisional Officer, Adilabad.

It is contended by the learned Government Pleader for Revenue that in view of the orders passed by the District Collector in directing the petitioner to approach the Revenue Divisional Officer, Adilabad, the petitioner ought to have preferred an appeal before the Revenue Divisional Officer instead of pursuing this writ petition. As seen from the record, the petitioner himself preferred an appeal before the District Collector challenging the order dated 02.12.2009, which was returned to be presented before the Revenue Divisional Officer who is the appropriate authority under the Act to entertain an appeal. That being the position, the counsel for the petitioner submits that he would prefer an appeal before the Revenue Divisional Officer but till then he seeks protection in view of interim order passed by this Court in the writ petition.

Without going into merits of the case and having regard to the facts and circumstances of the case, the present writ petition is disposed of advising the petitioner to approach the Revenue Divisional Officer, Adilabad by preferring an appeal along with the stay petition, if any, within four (04) weeks from today and the appropriate authority (R.D.O.) shall dispose of the same within a further period of three weeks from the date of filing of the appeal, in accordance with law, after hearing the petitioner. Till such time, *status quo* as on today shall be maintained. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

14.10.2015

vhb