

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.18404 OF 2015

Date:25.06.2015

Between:

T. Hariharanadha Reddy .. Petitioner

And

The State of Andhra Pradesh, rep.,
by its Principal Secretary, Revenue
Department, A.P. Secretariat,
Hyderabad and others .. Respondents

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.18404 OF 2015

ORDER:

Heard learned counsel for the petitioner. Learned Government Pleader for Revenue, appearing for the respondents, has already received instructions in the matter and has placed before this Court a copy of the reasoned order, dated 16.06.2015, passed by the Tahsildar, Chittoor Mandal, the 3rd respondent, directing eviction of the petitioner under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (for short, 'the Act').

The petitioner, who claims to be in possession of Acs.0.33 cents of land in Survey No.431 of Tenabanda Revenue Village, Chittoor Mandal and District, claims to be using it for cultivation. He states that he was given a notice, dated 11.06.2015, under Section 6 of the Act stating that he is in illegal possession of the land in question and to vacate the same within three days from the said notice. The petitioner submitted reply, dated 13.06.2015, to the notice issued by the 3rd respondent that in O.S.No.393 of 2015, a permanent injunction decree was passed in his favour and the 3rd respondent filed an application for setting aside the same and the same is pending for disposal. He, therefore, claimed that he cannot be evicted pending the said suit. Alleging that the petitioner is likely to be dispossessed, he filed the present Writ Petition.

When the Writ Petition came up on 23.06.2015, learned Government Pleader for Revenue submitted that a reasoned order, dated 16.06.2015, is already passed by the 3rd respondent. Hence, learned Government Pleader was required to produce a copy of the same and pending further orders, it was directed that the petitioner shall not be dispossessed from the land in question.

Though learned Government Pleader produced a copy of the reasoned order, dated 16.06.2015, passed by the 3rd respondent, it *inter alia* states that the petitioner refused to receive notice, dated 03.06.2015, issued under Section 7 of the Act and, therefore, it was served by affixture and thereafter a notice under Section 6 of the Act was issued to him. In response thereof, the petitioner filed objections, which were duly considered, and thereafter a reasoned order was passed holding that the petitioner highhandedly raised the

building on the land in question and that there is no evidence that he is actually residing in the said Village.

It can be noticed from the facts noted above that the notice under Section 6 of the Act is issued against the petitioner on 11.06.2015 and while issuing the said notice, no such reasoned order was passed, but, subsequently, on 16.06.2015 a reasoned order was passed by the 3rd respondent. In fact, the eviction order was passed at first instance and the reasoned order in support of the said eviction order was passed later on. Obviously, the same cannot be approved, as it is contrary to the scheme of the Andhra Pradesh Land Encroachment Act, which envisages that a person in an unauthorised occupation shall be given a notice under Section 7 of the Act calling upon him to submit objections, if any, and thereafter, if eviction is warranted, further order under Section 6 of the Act can be passed. Section 6 of the Act, therefore, provides for eviction including mode of eviction.

In the instant case, however, the 3rd respondent appears to have understood that under Section 6 of the Act, he needs to give notice and thereafter pass a reasoned order. Such understanding of the 3rd respondent is clearly contrary to the scheme of the Act, with the result, therefore, as is noted above, eviction order in the present case preceded the reasoned order. I, therefore, find it difficult to sustain the eviction order as well as the reasoned order, referred to above.

Consequently, the impugned orders of eviction under Sections 6 and 7 of the Act, dated 11.06.2015 and 16.06.2015 are set aside and the matter shall stand remitted back to the

3rd respondent for fresh consideration. The petitioner is given liberty to file his explanation to the notice under Section 7 of the Act on or before 01.07.2015 and thereafter the 3rd respondent shall consider the explanation of the petitioner and pass further orders duly supported by reasons under Section 6 of the Act.

Subject to the above observation, the Writ Petition is allowed. There shall be

no order as to costs.

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

VILAS V. AFZULPURKAR, J

25.06.2015

Note:- Furnish C.C. tomorrow.

(B/o)

KH