

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.29723 of 2015

ORDER:

Heard.

This writ petition is directed against the impugned notice, dated 05-08-2015 issued by the 2nd respondent alleging that the petitioner has illegally utilized the lands covered under FTL area of Bheema Samudram Tank situated at Charlapally Village, Nalgonda Mandal and District. The said notice was issued as a consequence of the directions of this Court in PIL No.47/2013, whereunder the revenue authorities were directed to take steps for removal of encroachments in co-ordination with all the departments and report compliance within eight weeks. The said PIL relates to a complaint made before this Court alleging inaction of the revenue authorities and irrigation Department in taking action against encroachments in respect of 184 Government tanks and protection of FTL area.

The petitioner is an Educational Institution, which purchased patta lands in Sy.Nos.694, 696, 697 and 698 vide registered Document No.13875/2007, dated 26-12-2007. It also claims that it has obtained due permission for conversion of the said land into non-agricultural purpose from the competent authority viz., the 3rd respondent, after paying necessary fee and also obtained a Land Use Certificate stating that the land can be used for construction of building. It is also stated that thereafter the Gram Panchayat granted permission for construction of building and after duly obtaining the said permission, constructions have been taken up for the purpose of Colleges established by the petitioner Society. The petitioner also stated that on the same date i.e., on 05-08-2015, a notice under Section 7 of the A.P.Land Encroachment Act, 1905 (for short 'the Act') was also issued to it. However, to that extent, it is stated that the petitioner had already replied to the said notice and is proposing to initiate independent proceedings. In this writ petition, therefore, the only issue that concerns is that the impugned

notice alleging encroachment by the petitioner on FTL area of the Tank. As per the averments in the affidavit, the said impugned notice is also replied to by the petitioner on 11-08-2015 denying the said claim.

Initially, when the writ petition came up for admission it was noticed that there were two different notices on the same date issued to the petitioner. Hence, the learned Government Pleader was required to get instructions about the same, particularly as final order was also stated to have been passed under Section 6 of the Act on 22-08-2015. Meanwhile, interim stay of eviction was also passed on 14-09-2015.

Learned Government Pleader has obtained instructions and stated that the said two notices are different covering different aspects viz., one covering the allegation under the A.P.Land Encroachment Act and other relating to the encroachment of FTL area.

I have heard Sri Mahmood Ali, learned counsel for the petitioner and the learned Government Pleader for Revenue.

During hearing, learned counsel for the petitioner made it clear that to the extent of notice issued under Section 7 of the Act, separate proceedings were initiated viz., a civil suit was already filed before a competent civil court and the relief with regard to the said notice is not claimed in the present writ petition. He, however, submits that to the extent of the impugned notice alleging encroachment on FTL area is concerned, he disputes the said contention on the basis of orders of conversion of agricultural land into non-agricultural purpose already obtained from the competent authority and the due permissions obtained from the Gram Panchayat for taking up constructions and submits that at no point of time, there was any objection on the ground that the aforesaid lands fall in FTL area.

Learned counsel for the petitioner also asserts that the aforesaid lands are patta lands purchased from the original owner and are far away from the Tank.

Learned counsel for the petitioner also submits that the very same authority-2nd respondent cannot adjudicate upon the issue as it is covered by the orders of the superior authority viz., the 3rd respondent, who granted

permission for conversion of land into non-agricultural purpose. Consequently, he further contended that the 2nd respondent would be biased and that the petitioner would not get fair adjudication and in support of the same he placed reliance on *Brooms Legal Maxim 6th Edition - Nemo Debet Esse Judex in Propria Sua Causa*, meaning thereby - no man can be judge in his own cause. He relied upon the judgment of the Hon'ble Supreme Court in ***Union of India and Others Vs. Sanjay Jethi and another***^[1], wherein the same proposition is accepted and the concept of real likelihood of bias/reasonable apprehension of bias explained.

While, on the contrary, the instructions of the learned Government Pleader show that the steps for removal of encroachments in FTL area as per the directions of this Court are under enquiry and in that regard, notice was given to the petitioner and the 2nd respondent is entitled to examine the same issue. Hence, the writ petition against issuance of notice is not maintainable.

I have considered the rival contentions. To the extent of allegation of bias and the propositions relied on by the learned counsel for the petitioner, I find it difficult to apply the same to the facts of the present case, as the petitioner has not made any such allegation in the affidavit filed in support of the writ petition. Hence, in the absence of pleadings, such contention can neither be examined nor any findings can be given on the said contention.

To the extent of the claim of the petitioner that he has not utilized the lands covered FTL area is concerned, that obviously is a matter, subject to enquiry by the 2nd respondent. Since the petitioner was already given appropriate notice to show cause, it is open to the petitioner to submit explanation in response to the said show-cause notice, so that the 2nd respondent can examine the same and take appropriate decision. The jurisdiction of the 2nd respondent in issuing the said notice being not in question, I do not see any reason to entertain the writ petition any further.

To the extent of notice under the A.P.Land Encroachment Act being not the subject matter of this writ petition, the petitioner is free to agitate the

remedies, which he has already availed against the said notice.

Since there was stay of eviction pending this writ petition, in pursuance of the impugned notice, if no explanation is filed by the petitioner so far, the petitioner is granted two weeks time from today to file its explanation to the said notice and the 2nd respondent is directed to consider the same in the light of the records and pass appropriate orders in accordance with law, after giving an opportunity of personal hearing to the petitioner.

Accordingly, the writ petition is disposed of. No costs.

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

VILAS V.AFZULPURKAR, J

Date: 08-12-2015

Prv

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[\[1\]](#) (2013) 16 Supreme Court Cases 116