

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 8728 of 2012

ORDER:

-

Heard learned counsel for the petitioners and Government Pleader for Revenue. With the consent of both the parties, the main writ petition is heard at the admission stage itself.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in issuing notice under Section 6 of Andhra Pradesh Land Encroachment Act, 1905 (for short "the Act") to evict the petitioners from the land in their possession without giving notice as required under Section 7 of the Act in contravention of the entries made in revenue records from time to time, as illegal, arbitrary and contrary to the provisions of the Act.

The averments in the affidavit filed in support of the writ petition are as under:

The petitioners herein claims to be owners and possessors of land in Sy.No.205 of Piduguralla village, Guntur District as they have inherited the said land from their grandfathers. Entries seems to have been made in the revenue records and their names were entered as owners. When the respondents claimed that it is a tank poramboke, the petitioners made an application to provide revenue records in respect of the above land but the respondents informed them that the revenue records with regard to Sy.No.205/B are not available with them. The averments in the affidavit further show that the entries made in the revenue records pertaining to 1378 F indicate that the petitioners are the

owners and possessors of the land. The main grievance of the petitioners is that without giving any notice as required under Section 7-A of the Act, the revenue authorities issued notice under Section 6 of the Act asking the petitioners to vacate the land within seven days from the said order. Challenging the same the present writ petition is filed.

While issuing notice before admission, on 29.03.2012 this Court ordered *status-quo* for a period of four weeks and subsequently the same was extended until further orders.

A counter came to be filed by the Tahsildar denying the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that notices were issued to all the encroachers on 20.01.2012 demanding them to vacate the premises within seven days. In spite of service of notices, the petitioners herein failed to give any reply and also failed to vacate the premises. Hence, the order under challenge came to be passed. It is stated that the allegation of the petitioners that the respondents have not complied with the mandatory provisions of Section 6 of the Act in conducting enquiry is incorrect since the impugned order came to be passed only after conducting enquiry as per law. It is further stated that the encroachments were on government tank poramboke and as such they are liable for eviction as there is a ban existing on the tanks and tank bed lands for assignment or for any other purposes.

Additional counter came to be filed by the Tahsildar in the month of April, 2012 stating that since no explanation was submitted by the petitioners, the authorities cannot be found fault with.

Reply to the said counters came to be filed disputing the averments in the counters.

Though various grounds are raised in the writ petition, the counsel for the petitioners submits that the alleged notice in the month of January, 2012 and enquiry said to have been conducted by the respondents are not placed along with the counter. Hence, he submits that there is any amount of doubt as to whether there was any notice or enquiry by the authorities. He submits that on 16.03.2012 the petitioners herein submitted an explanation claiming to be the owners and possessors of the lands and the respondent authorities ought to have re-considered the decision by taking into consideration the said explanation.

It is true that no documents evidencing service of notice issued in the month of January, 2012 and the enquiry alleged to have been conducted by the authorities are not made part of the record. Except the averments in the counter which are disputed by the learned counsel for the petitioners, there is no documentary evidence to show issuance of notice, service of notice and enquiry prior to passing of the impugned order. Further, the impugned order does not anywhere indicate holding of an enquiry and the material collected before passing the said order.

Having regard to the said circumstances, the present writ petition is disposed of, treating the impugned order as notice under Section 7 of the Act and by taking into consideration the explanation submitted on 16.03.2012 by the petitioners, the respondent authorities shall pass an order, after giving personal hearing to all the petitioners, in accordance with law as expeditiously as possible preferably within a period of three

months. 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**

08.02.2016
gkv