

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.7251 OF 2012

ORDER :

This Writ Petition is filed by the petitioner assailing the order in letter No.B/416/2010, dt.29.04.2010 passed by the 4th respondent.

2. Petitioner is the joint owner of the land comprised in survey Nos.43, 58, 59, 62, 63 and 64 of Kachavanisingaram Village, Ghatkesar Mandal, Ranga Reddy District. Nalla Malla Reddy Engineering College is the other co-owner.

3. On 20.04.2010 a notice under Section 7 of the A.P. Land Encroachment Act, 1905 was issued to the petitioner alleging that the petitioner had encroached Acres 6-12 guntas in survey No.66 and had constructed a compound wall therein. Petitioner was given seven days time to furnish explanation.

4. Petitioner assailed the said notice by filing W.P.No.9741 of 2010 contending that the respondents should be restrained from demolishing the compound wall constructed by the petitioner, before a final order under Section 6 of the Act could be passed.

5. The said Writ Petition was allowed on 27.04.2010 observing that the petitioner is yet to submit explanation to the 4th respondent; until such explanation is submitted and the matter is considered by passing an order under Section 6 of the Act, even if the petitioner had encroached any government land, no coercive action could have been taken, such as dispossession of the petitioner or demolition of the structures. The Court observed that until and unless the matter is finally decided by the 4th respondent after considering the explanation of the petitioner, the compound wall erected by the petitioner cannot be interfered with and it granted one week time to the petitioner to submit explanation. It also observed that if it is necessary, the Tahsildar may

also conduct survey, since there is a boundary dispute between the petitioner and the government.

6. Petitioner therefore had time till 03.05.2010 to submit an explanation. However, on 29.04.2010 itself, even before the expiry of period of one week granted by this Court to the petitioner to submit explanation, the impugned order dt.29.04.2010 was passed by the 4th respondent stating that the petitioner had failed to submit his explanation to the notice dt.20.04.2010 issued to him.

7. Assailing the said order, the present Writ Petition is filed.

8. On 15.03.2012 this Court, while ordering 'notice before admission', directed that status quo obtaining as on that day shall be maintained in all respects.

9. No counter affidavit is filed by the respondents. But, the Government Pleader for Revenue appearing for respondents stated that the impugned order dt.29.04.2010 could not have been passed before the expiry of time granted by this Court in its order dt.27.04.2010 in W.P.No.9741 of 2010 to the petitioner to submit explanation to the notice dt.20.04.2010 issued under Section 7 of the Act.

10. Having regard to the said submission, the Writ Petition is allowed; the order dt.29.04.2010 passed by the 4th respondent is set aside; the 4th respondent is directed to consider the petitioner's explanation dt.30.04.2010 to the above show cause notice dt.20.04.2010 issued to the petitioner and then pass a fresh order in accordance with law and communicate the same to the petitioner. Till this exercise is completed *status quo* prevailing as on today shall be maintained in all respects. The 4th respondent shall also pay costs of Rs.1,000/- to the petitioner for acting contrary to the order dt.27.04.2010 in WP.No.9741 of 2010 and in passing the impugned order dt.29.04.2010, in spite of the fact that the time given by this Court

in the said order for submitting explanation had not expired. It is made clear that if any survey is warranted to demarcate the petitioner's land and the land of the government, the same shall also be taken up, if so advised.

11. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

23rd June, 2016.

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