

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION No.3460 of 2016

ORDER:

The petitioner questions the notice issued by respondent No.1 vide Rc.No.B/1132/2016, dated 30.01.2016, under Section 7 of the A.P. Land Encroachment Act, 1905 (for short, "the Act") alleging that the petitioner has encroached 32.00 Acres of land in Sy.No.405 of Palvancha Village out of a total extent of 320.04 Acres.

2. The details of the land was mentioned as Govt. (UCE, KU), Kothagudem. Petitioner claims in the affidavit that it was allotted lands under three different sale deeds bearing Nos.349/1982, 561/1996 and 283/2010 admeasuring 61.25 Acres, 34.43 Acres and 5.05 Acres respectively. It is stated that all these lands are fenced for the last twenty years. Survey was conducted in the above said lands by the revenue officials and forest officials on 19.11.2015. The petitioner filed detailed letters requesting the officials for joint survey and when no steps are taken in that regard, petitioner was issued with the impugned notice.

3. Learned counsel for the petitioner states that the impugned notice is vague as it does not show as to whether the land in question belongs to the Government or the University and it also does not specify which 32.00 Acres are allegedly encroached or not. Learned counsel states that since the land was allotted to the petitioner by A.P.I.I.C., there cannot be any encroachment by the petitioner and that in the absence of any details available in the impugned notice, petitioner's right to file detailed objections is affected. He relied upon a decision of the Hon'ble Supreme Court in **Government of Andhra**

Pradesh v. Thummala Krishna Rao and another^[1].

4. Heard the learned Government Pleader for Revenue appearing for respondent Nos.1 to 4 and Sri L.Prabhakar Reddy, learned Standing Counsel appearing for respondent No.5.

5. I am unable to see any reason to entertain the writ petition against the impugned show cause notice. It may be a fact that petitioner was allotted a large extent of land for setting up an industry by the A.P.I.I.C. Admittedly, surveys were conducted and *prima facie*, there is material to establish that the petitioner is not running the industry over and above the land allotted by A.P.I.I.C. So, respondent No.1 is justified in issuing the impugned notice. However, whether there is any encroachment as alleged or not is a matter which respondent No.1 has to determine after examining the explanation/objections of the petitioner by enabling it to file effective objections. The petitioner is at liberty to seek necessary documents from respondent No.1 particularly, relating to the area of 32.00 Acres which is alleged to have been encroached by it. If such a request is made, respondent No.1 shall consider the same and submit the relevant documents to the petitioner and thereafter, allow the petitioner to submit its objections/explanation. Respondent No.1 shall thereafter consider the petitioner's explanation and pass a reasoned order either accepting or rejecting its claim. Till passing of the appropriate orders, petitioner's enjoyment and possession of the land in question shall not be interfered with and the petitioner shall not be dispossessed therefrom.

6. The decision of **Thummala Krishna Rao's** case (1st cited supra), in my view, has no application to the facts of this case as the Hon'ble Supreme Court itself stated that remedy under Section 7 of the Act cannot be resorted to unless there is an encroachment of a very recent origin. In my view, only after an appropriate enquiry, respondent No.1 has to determine as to whether there is any encroachment and if so, whether it is of a recent origin or not.

Therefore, there is no reason to quash the impugned notice at the threshold.

7. The Writ Petition is, accordingly, disposed of. The petitioner shall request for documents from respondent No.1 as mentioned above on or before 15.2.2016 and file its explanation. There shall be no order as to costs.

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

JUSTICE VILAS V.AFZULPURKAR

Date: 05.02.2016

Note:-

Furnish C.C. by 8.2.2016

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DATE: 05.02.2016

AMD

[\[1\]](#) A.I.R. 1982 S.C.1081