

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.9369 of 2011

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for respondent

Nos.1 to 4.

2. Petitioners in this Writ Petition question order dt.28-03-2011 issued by 4th respondent under the A.P.Land Encroachment Act, 1905.

3. Petitioners contend that their father acquired land admeasuring 300.47 sq. yds in Kurnool village, Zaffargadh Mandal, Warangal District 50 years prior to the filing of the Writ Petition and they were residing in the house located therein. According to them, they reconstructed the house in 1999 pursuant to the sanction orders dt.16-09-1999 granted by the Gram Panahayat. Petitioners contend that on 08-02-2010, the husband of 5th respondent and others tried to demolish the compound wall constructed by the petitioners and attempted to encroach the property, that they filed O.S.No.98 of 2011 before II Additional Junior Civil Judge, Warangal for an injunction restraining 5th respondent and her husband from interfering with the possession and enjoyment of the petitioners of the subject property, and that on 08-02-2011 in I.A.No.95 of 2011 in O.S.No.98 of 2011, an interim

injunction was granted in their favour. Petitioners contend that 5th respondent then approached 4th respondent and influenced them and got the 4th respondent to issue notice

dt.21-02-2011 alleging that the petitioners are in occupation of government land in Sy. Nos.666, 667, 668, 669, 670 and 671 and that they had made constructions without any approval.

4. Questioning the said notice dt.21-02-2011, petitioners filed W.P.No.6797 of 2011. Petitioners had also submitted an explanation dt.26-02-2011 to the show cause notice dt.21-02-2011 issued by 4th respondent.

5. On 16-03-2011 the said Writ Petition was disposed of directing the respondents that in case, any adverse orders are passed against the petitioners, then the house in question shall not be demolished for a period of two weeks from the date of passing of the order by the respondents, in order to allow the petitioners to avail alternative remedy of appeal.

6. Thereafter on 28-03-2011 the impugned order is passed referring to the above order of the High Court and informing the petitioners that if 5th respondent was allotted land only for the purpose of a shop, no action would be taken against the house of the petitioners and that otherwise action would be taken by the State Government for which the petitioners would be held

responsible.

7. Learned counsel for the petitioners contends that 4th respondent had not considered the explanation dt.26-02-2011 submitted by the petitioners at all in the impugned order and the impugned order appears to have been passed without application of mind since the petitioners were disputing the fact that they are in occupation of any government land.

8. The learned Government Pleader for Revenue appearing for the respondents is unable to show from the impugned order that 4th respondent had considered petitioner's explanation dt.26-02-2011 while passing the impugned order. He also could not explain the logic behind the said order. He did not dispute that 4th respondent did not decide the question whether the land in occupation of the petitioners is Government land or not.

9. Therefore, the impugned order dt.28-03-2011 passed by 4th respondent is set aside and the matter is remitted back to 4th respondent to consider afresh petitioners' representation dt.26-02-2011 to the show cause notice dt.21-02-2011 issued by 4th respondent, to provide a personal hearing to the petitioners; and to pass a reasoned order in accordance with law and communicate the same to the petitioners. If any adverse order is passed against the

petitioners, it will not be given effect to for a period of two weeks from the date of passing such order so that the petitioner can avail remedy of appeal.

10. Accordingly, the Writ Petition is allowed. No costs.

11. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-06-2016

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