

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18037 of 2016

ORDER:

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This writ petition is filed questioning the impugned order issued under Section 8 of the Andhra Pradesh Revenue Recovery Act, 1864 (for short "the Act").

Learned counsel for the petitioner submits that Section 8 of the Act deals with rules regarding seizure and sale of immovable property. The respondent-authorities have not followed the said procedure. As such, the impugned order itself is without jurisdiction.

Learned Government Pleader for Revenue submits that since Form-1 issued in pursuance to the determination of amount against the petitioner regarding misappropriation of amounts, without challenging the order determining the liability the petitioner cannot challenge the provisional notice. As such, the writ petition is not maintainable.

The short question that falls for consideration is, whether Section 8 of the Act empowers the 3rd respondent to issue Destrainment Order under Section 8 of the Act?

Section 8 of the Act reads as follows:

Rules for seizure and sale of movable property:

In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed.

First: Demand in writing:- The Collector, or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property a defaulters; a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrears fell due. The persons employed to distrain shall produce the writing which, if the arrear together with the batta due to him, under Section 53, be not at once paid, shall be his authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where it may be lodged or kept.

Second: Writing to state that the distrained property will be sold:

The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount with interest, batta, and all the expenses of the distress be previously discharged.

Third: Service when defaulter is absent:-

When a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence or on the premises where the property may have been distrained, before the expiration of the third day, calculating from the day of the distress.

Section 8 does not authorize the 3rd respondent to pass impugned order against immovable property.

Section 25 of the Act reads as under:

Section 25 of the Act authorizes Collector or any other officer empowered by the Collector to attach the land of the defaulter or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid. Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

As per Section 25 of the Act, in the impugned notice, there is no mention of written demand served on the petitioner.

In view of the same, *Prima facie*, I am of the opinion that the impugned order is not in accordance with the provisions of the Act and on that sole ground, the impugned order is set aside. However, it is open for the competent authority to take appropriate action for recovery of amounts from the petitioner by following the provisions of the Act.

Accordingly, the writ petition is disposed of. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

22-06-2016

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