

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

WRIT PETITION No.39673 of 2012

ORDER:

Petitioners assail the proceedings of 4th respondent in Rc.B.858/1997 dt.10-10-2011 cancelling the possession certificates issued to the petitioners.

2. Learned counsel for petitioners contends that the said proceeding has been issued cancelling possession certificates issued to petitioners in respect of the plots which are in their occupation wherein petitioners have made constructions, that the same have been cancelled by 4th respondent without any prior notice to petitioners, and without conducting any enquiry or inviting explanations from the petitioners.

3. Although in the counter affidavit filed by 4th respondent it is stated in para-3 that the said order was passed with the consent of the petitioners, no material is placed before this Court in support of the said plea.

4. It is also stated that a direction was issued on 31-07-2012 in complaint No.2697/2011/B1 by the Hon'ble Lokayuktha to the 2nd respondent to see that the encroachments in plot

Nos.4A and 5A are removed and for submission of report and thereafter proceedings were initiated under the provisions of the A.P. Land Encroachment Act, 1905. It is alleged that the petitioners have trespassed into the land high handedly without the permission of the Government and have constructed houses which are in the middle of a road in the layout, which was being used for public purpose.

5. Sri T.C. Krishnan, learned counsel for 6th respondent supports the stand taken by the 4th respondent.

6. A reading of the order dt.10-10-2011 passed by the 4th respondent does not disclose that any prior notice was issued to petitioners proposing to cancel the possession certificates issued to them. No explanation of the petitioners was called for or considered by the 4th respondent. Since there is no material to show that the said order was passed after obtaining consent of the petitioners (as alleged in para-3 of the counter-affidavit filed by 4th respondent), the plea of alleged consent of petitioners has to be disbelieved.

7. It is settled law that any administrative action, which affects the civil rights of parties should be in compliance

with the principles of natural justice. Since the impugned order passed by 4th respondent is in gross violation of principles of natural justice, the impugned order is set aside. However, this will not preclude the 4th respondent from issuing fresh notice to petitioners for removing the structures erected by them in accordance with law, inviting explanations from petitioners in that regard and then passing a reasoned order and communicating the same to petitioners. This exercise shall be completed by 4th respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order. Till the 4th respondent follows this procedure and passes a fresh order, the petitioners shall not be evicted from the subject plots in their occupation. The 6th respondent shall also be given an opportunity to participate in the enquiry to be conducted by 4th respondent and to place material before the 4th respondent.

8. The Writ Petition is disposed of with the above directions. No costs.

9. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-06-2016

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