

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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WRIT PETITION No.41416 of 2015

BETWEEN

RSV Function Hall.

... PETITIONER

AND

The State of Telangana Pradesh, Rep. by its Principal Secretary, Revenue Department, Secretariat, Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 01.02.2016

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

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ORDER:

Petitioner states in the affidavit that the function hall stands in an extent of 423 sq. yards in Sy.No.1064 situated at Peddacheruvu, Kodad Village and Mandal, Nalgonda District. Petitioner claims to have purchased the aforesaid land from its erstwhile owners under various registered sale deed, as referred to in para 3 of the affidavit and claims that he was subsequently granted permission by the Kodad Gram Panchayat, on his application dated 18.03.2009, to construct a function hall. Thus, in accordance with the said permission dated 07.04.2009, petitioner is stated to have constructed the function hall. Alleging that the notice under Section 6 of the A.P. Land Encroachment Act (for short 'the Act') dated 21.05.2015 was issued to the petitioner by the fourth respondent, the present writ petition is filed.

2. Petitioner alleges, *inter alia*, that he was not given any opportunity to submit explanation and without following due process of law straightaway the impugned notice under Section 6 is issued.

3. When the writ petition came up for admission on 21.12.2015, the following order was passed:

"Notice before admission.

Prima facie, since impugned order under Section 6 of the Land Encroachment Act, 1905 has not preceded by any notice under Section 7 and without any opportunity to the petitioner, the impugned order shall remain stayed till 28.12.2015.

List on 28.12.2015 in the motion list to enable the learned Government Pleader to get instructions."

Interim order was also extended further on 06.01.2016 and is in operation now.

4. Learned Government Pleader has received instructions and informed the Court on 25.01.2016 that Section 7 notice was already served on the

petitioner and acknowledged by him before passing of the impugned order under Section 6. The notices of July 2014 and May 2015 containing acknowledgement of the petitioner were produced before the Court, which were also examined by the learned counsel for the petitioner and he took time to verify the said fact.

5. Today, the learned counsel for the petitioner states that the petitioner is not able to confirm whether Section 7 notice is received and submits that the at least now he be given opportunity to submit explanation.

6. Instructions received by the learned Government Pleader, further, show that on inspection it is found that Sy.No.1064 to the extent of 423 sq. yards comes under FTL of the said Peddacheruvu, Kodad village, hence, petitioner was given notice under Section 7, as referred to above, but he did not submit any explanation or produced any documents. Ultimately, the impugned Section 7 notice was issued.

7. Apparently, petitioner has suppressed service of notice under Section 7 of the Act, as referred to above and based on the said stand of the petitioner, this Court passed interim order. It is now clear and apparent that the petitioner was served with not one but two notices under Section 7 of the Act. Hence, the basic averments of the petitioner that impugned Section 6 notice is not preceded by Section 7 notice and that there was no opportunity for the petitioner to submit explanation, are not only factually incorrect but such averments are made in suppression of material fact that Section 7 notice has been served on the petitioner. Hence, no indulgence is called for under the discretionary jurisdiction of this Court.

The writ petition is dismissed with costs quantified at Rs.5,000/- (Rupees Five Thousand only) payable to the Secretary, High Court Legal Services Authority, Hyderabad within a period of four (4) weeks from today. As a sequel, the miscellaneous applications, if any, shall stand closed. There

shall be no order as to costs.

February 1, 2016
DSK

VILAS V. AFZULPURKAR, J