

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
WRIT PETITION No.11629 OF 2012

ORDER :

In this Writ Petition, petitioner assails the order dt.10.04.2012 in proceedings No.C/G.D/2089/2008 of the 3rd respondent issued under Section 6 of the A.P. Land Encroachment Act, 1905(for short 'the Act').

2. Petitioner contends that he is the son of late Smt M.Kanthamma and late Sri M.Bhadraiah, who have purchased the subject property of an extent of 290 sq. yards in 1968; that his parents erected two rooms in the subject property and were staying there; that after the death of his parents he stayed for a short time in those rooms, but later shifted to H.No.6-2-889, Thummala Basthi, Khairatabad, Hyderabad to run his business to eke out his livelihood. Petitioner alleges that his father had even obtained permission from the municipal authorities on 09.03.1978 and thereafter partly constructed a house by raising six pillars and two rooms in the subject property, but due to financial constraints and other reasons, construction could not be completed and in the structures erected by the petitioners' parents, his relatives were residing.

3. He alleged that a notice dt.31.03.2012 under Section 7 of the Act addressed to the petitioner's late mother Smt M.Kanthamma was received by the relatives of the petitioner

asking her to show cause on or before 07.04.2012. Petitioner contends that his relatives, who were residing in the said house, did not handed over the said notice to the petitioner or his brothers and because of lack of knowledge of the said notice, petitioner did not submit any explanation to the said show cause notice.

4. Since there was no explanation submitted, the 3rd respondent passed orders on 10.04.2012 under Section 6 of the Act directing the Revenue Inspector, Khairatabad to evict the petitioner from the subject land.

5. Petitioner contends that the notice dt.31.03.2012 issued by the 3rd respondent was addressed to his late mother, who died on 17.12.2009, and a copy of the death certificate issued by the Municipal Corporation of Hyderabad in support of this plea is placed on record. Therefore, the petitioner contends that since the entire proceedings were initiated under the provisions of the Act against a dead person, they are a nullity and deserve to be set aside.

6. On 20.04.2012 this Court directed status quo obtaining as on that day to be maintained and the said order was extended from time to time.

7. Counter affidavit was filed by the 3rd respondent stating that the property in question is classified as 'Government NALA' and vests in the Government, that it is objectionable

land which cannot be regularized and the order directing Smt M.Kantamma to vacate the said property was rightly passed.

8. Although the respondents contended that notice under Section issued on 31.03.2012 was received by the petitioner on 02.04.2012, no evidence in support of the said plea has been filed before this court.

9. In any event, it is not disputed that notice under Section 7 of the Act was addressed to the petitioner's late mother and even the order dt.10.04.2012 under Section 6 of the Act was passed against the petitioner's later mother. Respondents nowhere disputed that petitioner's mother had died on 17.12.2009. Therefore, the proceedings under the Act appear to have been initiated against a dead person and are clearly a nullity.

10. Therefore, the Writ Petition is allowed; the order dt.10.04.2012 passed by the 3rd respondent under Section 6 of the Act declaring that the property allegedly purchased by the petitioner's parents is government encroached land and directing the Revenue Inspector, Khairatabad to evict the petitioner from the subject land cannot be sustained and it is accordingly set aside. However, liberty is given to the 3rd respondent to initiate appropriate proceedings against the petitioner under the provisions of the Act afresh, by serving notice on the petitioner at his residential address H.No.6-2-889, Thummala Basthi, Khairatabad, Hyderabad and to take

further action after inviting explanation from the petitioner and after passing a reasoned order. Till this exercise is done by the 3rd respondent and the order passed by him is communicated to the petitioner, status quo prevailing as on today in all respects shall be maintained. There shall be no order as to costs.

11. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

07th June, 2016
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